

# INDIAN ADMINISTRATION



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# INDIAN ADMINISTRATION

BY

G. N. JOSHI, M.A., LL.B.

ADVOCATE, O.S. PROFESSOR OF LAW,  
*Government Law College, Bombay.*

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## PREFACE

This book is intended primarily to supply the need of a text-book for Undergraduates of the Indian Universities and in particular the First Year Arts students of the Bombay University, who have to study Indian Administration under the new syllabus. Indian Administration as it is generally understood includes the Indian Constitution as well as the different branches of the administrative machinery. All these subjects are included in this book. Great changes have been introduced in the structure of the Government by the Government of India Act, 1935, and the Orders in Council made thereunder, and consequently also in the administrative machinery. All these changes are noted.

I have endeavoured to simplify the material and present the subject in simple and non-technical language. The treatment is analytical with a brief historical background. Provincial Autonomy will come into operation on April 1, 1937, but the Federation will not come into existence before April 1, 1938. During this interval, the existing Central Government and Legislature will continue unchanged. I have therefore dealt with both the existing and the federal executive and legislature.

The book is primarily meant for students, but it is hoped that it will be useful to citizens also.

My thanks are due to the authors of various books I have consulted. I am grateful to my friends for their valuable suggestions.

*Government Law College,  
Bombay.*

*January, 1937.*

G. N. JOSHI.

"By transforming British India into a single Unitary State, it (British Rule) has engendered among Indians a sense of political unity. By giving that State a Government disinterested enough to play the part of an impartial arbiter, and powerful enough to control the disruptive forces generated by religious, racial and linguistic divisions, it has fostered the first beginnings, at least, of a sense of nationality, transcending those divisions. By establishing conditions in which the performance of the fundamental functions of government, the enforcement of law and order and the maintenance of an upright administration, has come to be too easily accepted as a matter of course, it has set Indians free to turn their minds to other things, and in particular to the broader political and economic interests of their country. Finally, by directing their attention towards the object-lessons of British constitutional history and by accustoming the Indian student of government to express his political ideas in the English language, it has favoured the growth of a body of opinion inspired by two familiar British conceptions; that good government is not an acceptable substitute for self-government, and that the only form of self-government worthy of name is government through Ministers responsible to an elected Legislature."

J. S. C. REPORT.

"And if the constitutional changes now impending predicate the remarkable growth of Indian political consciousness in terms both of the desire for self-government and of a growing realisation of the essential unity of India, so also those changes connote a profound modification of British policy towards India as a member of the Commonwealth. For indeed by their very nature they involve nothing less than the discarding of the old ideas of Imperialism for new ideals of partnership and co-operation."

H. E. THE VICEROY OF INDIA IN A  
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# PART I



## CHAPTER I

### HISTORICAL BACKGROUND

"Our acquisition of India was made blindly. Nothing great that has ever been done by Englishmen was done so unintentionally, so accidentally, as the conquest of India."

SIR JOHN R. SEELEY.

"The announcement of August 20, 1917, marks an end of one epoch, and the beginning of the new one. Hitherto, we have ruled India by a system of absolute government, but have given her people an increasing share in the administration of the country and increasing opportunities of influencing and criticising the Government. . . . Responsibility is the savour of popular government, and that savour the present councils wholly lack. Our first object must be to invest them with it. They must have real work to do; and they must have real people to call them to account for their doing it."

M. C. REPORT.

"By general admission, the time has come for Parliament to share its power with those who for generations it has sought to train in the art of government; and, whatever may be the measure of the power thus to be transferred, we are confident that Parliament in consonance with its dignity and with the traditions of the British people will make the transfer generously and in no grudging spirit."

J. S. C. REPORT.

The conquest or acquisition of India by the British is an outstanding event of modern history. The British came to India to trade, and in the process of trading, by the force of circumstances, became the rulers of India. Really and truly, the East India Company which commenced trading with India under a Charter granted by Queen Elizabeth in 1600 conquered or acquired India with its own resources, but with the help and guidance of the British Parliament

under the authority of and on behalf of the British Crown.

The origin and growth of British administration in India is rooted in the history of British India. "The history of British India falls into three periods. From the beginning of the seventeenth to the middle of the eighteenth century the East India Company is a trading corporation existing on the sufferance of native powers and in rivalry with the merchant companies of Holland and France. During the next century the Company acquires and consolidates its dominion, shares its sovereignty in increasing proportions with the Crown, and gradually loses its mercantile privileges and functions. After the mutiny of 1857 the remaining privileges of the Company are transferred to the Crown, and then follows an era of peace in which India awakens to new life and progress."<sup>1</sup> During the third period India becomes politically conscious and demands a share in the administration of the country. The third period ends with the passing of the Act of 1919 based on the Declaration of August 20, 1917, which, among other things, accepted the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire as the guiding principle for future development. The fourth period begins with the introduction of Dyarchy in the provinces in 1921. During this period India demands full responsible government. This period ends with the passing of the Government of India Act, 1935, which inaugurates a new era in the constitutional development of India. It definitely places India on the way to full responsible government.

<sup>1</sup> *Imperial Gazetteer*. vol. iv, p. 5.

**THE FIRST PERIOD (1600-1765)**

The first period (1600-1765), which is entirely a trading period, begins with the Charter of Queen Elizabeth. Without going into the details of the fortunes of the East India Company it is enough to state that during this period the Company is essentially a trading corporation enjoying mercantile privileges of trade with the East Indies.

Owing to the capture of Constantinople by the Turks, the nations of Western Europe were compelled to resort to the sea route to the East. Their spirit of adventure helped them. Vasco da Gama landed in Calicut in 1499 and within a short time the Portuguese Empire was founded in the East. In course of time Portugal was dominated by Spain. The monopoly of Portugal-Spain was soon challenged by England and Holland. In England the spirit of adventure and colonisation was in ascendancy during the sixteenth century. Holland and Spain were at war for a number of years and it became difficult for Portugal and Spain to retain their monopoly of the Eastern trade. In course of time Holland and England also came into conflict in the field of the Eastern trade. As the position of the individual traders in this competition became precarious the Chartered Companies came into existence. Queen Elizabeth granted a Charter to certain London merchants in 1600 for trading purposes in the East Indies. In return for these privileges of trade monopoly the East India Company paid to the Crown a share of its profits.

The Charter granted by Queen Elizabeth was renewed from time to time by the English sovereigns and after 1688 by Acts of Parliament. The Government

of England had neither direct share nor responsibility in the affairs of the Company. The qualification for the proprietors was the possession of £500 stock and upwards and for the Directors £2,000 stock. The Directors were elected annually by the proprietors. The Company's settlers were responsible only to the Directors. The Company had also under that Charter the right "to acquire territory, fortify their stations, defend their property by armed force, coin money and administer justice within their own settlements." In the exercise of this right the Company acquired a few trading stations. The first of such stations was at Surat where the Company obtained some concessions from the Emperor Jehangir. It built factories, mostly on or near the coasts. In 1616 the Company opened a factory at Muslimpattam and in 1640 Fort St. George was built at Madras on land acquired from an Indian ruler. A factory was also built on the Hoogly and was moved to Calcutta in 1699. In 1662 the King of Portugal handed over the island of Bombay as a dowry to Charles II who granted it a few years later to the Company.

With the death of Aurangzeb in 1707 the authority of the Mogul Empire was undermined. The provincial governors or subas became virtually independent. After the battle of Panipat, in 1761, the mighty Mogul Empire was practically dissolved and in the political field a vacuum was created. There was no strong central power to arrest the process of disintegration. The English took advantage of the political conditions in India, and the European situation helped them in defeating and ousting their European rivals—the Dutch and the French—from India. At one time the French had almost established their rule in India

but the victories of Clive turned the scale in favour of the English. Clive's tactics and British control of the sea and the short-sighted policy of the French Government proved fatal to the original plans and ambitions of Dupleix. Thus the English filled in the vacuum.

The settlements at Calcutta, Bombay and Madras were each governed by a Governor or President and a Council.

After the battle of Plassey the cession of Burdwan, Midnapore and Chittagong to the Company by the Nawab of Bengal in 1760 made the Company masters of a large tract of territory and compelled them to assume the task of reorganising the administration of Bengal. This period terminates with the grant of *divani* (the acquisition of powers of revenue collection and civil administration) to the Company by the Mogul Emperor in 1765, when the Company became virtually the rulers of Bengal, Bihar and Orissa.

#### THE SECOND PERIOD (1765-1858)

The second period (1765-1858) witnesses the transformation of the Company from a trading corporation into a political body. The Company openly assumes the role of a territorial sovereign under delegated authority, sharing its sovereignty in diminishing proportion with the Crown and gradually losing its mercantile privileges and functions and finally seeing its own extinction. It is during this period that we see the beginnings and growth of administrative and legislative machinery for British India.

By 1772 the Company had already become under the pressure of circumstances a territorial potentate. Strangely enough, when its agents were handling the

revenues of a kingdom in the name of the Mogul Emperor, it found itself in financial difficulties. The opulence and arrogance of the servants of the Company returning to England from India directed the attention of the English to their responsibility for the governance of India. The clauses of the Charters were inadequate to meet the new situation. Hence in 1773 Parliament "first undertook the responsibility of legislating for India," which was given effect in Lord North's Act. This Act, known as the Regulating Act, recognised

THE REGULATING  
ACT, 1773

the authority of the Company to carry on hostilities and make treaties with powers in India. It reconstituted the Council of Bengal, changed the title of Governor to Governor-General and subjected the other two Presidencies of Bombay and Madras to that of Bengal in matters of the declaration of war and the making of peace. (Till 1773 the settlements at Bombay and Madras were governed by a President or a Governor and a Council.) The first Governor-General (Warren Hastings) and his Council of four members were named in the Act; thereafter they were to be appointed by the Court of Directors. The power of making rules, ordinances and regulations was conferred upon the Governor-General and Council. A Supreme Court of Judicature, comprising a chief justice and four puisne judges nominated by the Crown, was established for Bengal. The Court of Directors was required to communicate to the Treasury all despatches from India relating to revenue, and all despatches relating to public affairs to a Secretary of State. Before this Act the three Presidencies of Bombay, Madras and Bengal were independent of one another.

This Act is criticised with some force as violating the first principle of administrative mechanics. It was based on the theory of checks and balances, hence in its actual working it broke down. "It created a Governor-General who was powerless before his own Council and an executive that was powerless before the Supreme Court."

When by 1782 the Company emerged from the wars with native and European powers as the strongest power in India, Parliament resolved to strengthen its control over the Government of India. On the report of the Committee which was specially appointed to inquire into the affairs of the Company, Warren Hastings (the Governor-General) was recalled. The Directors of the Company defied Parliament and retained Warren Hastings. Hence in 1783 Fox, on behalf of the British Ministry, introduced his India Bill which in substance transferred the authority belonging to the Court of Directors to a new body named in the Bill for a term of four years, which was afterwards to be appointed by the Crown. This Bill passed through the House of Commons by a majority of two to one, but was rejected by the House of Lords, chiefly through the intervention of George III. For the first and the last time, a British Ministry was wrecked on an Indian issue. Pitt, who became Prime Minister in 1783, introduced his famous Bill and carried it through Parliament. It is known as Pitt's India Act, 1784. It reformed the constitution of the Government of India. Its effect was two-fold. First, it constituted a department of state in England under the official style of "Commissioners for the Affairs of India," generally known as

the Board of Control, whose special function was to control the policy of the Court of Directors, thus introducing the dual system of Government by the Company and by a Parliamentary Board which lasted till 1858. Secondly, it reduced the number of members of the Council of Bengal to three, of whom the Commander-in-Chief was to be one. It also modified the councils at Madras and Bombay on the pattern of that of Bengal.

The Board, as modified by a subsequent Act, consisted of five members of the Privy Council, of whom the two Secretaries of State and the Chancellor of the Exchequer were three. These high officials were not expected to take active part in the work of the Board. Hence the first Commissioner named was appointed President of the Board and was given a casting vote. This made him practically supreme. The first President was Henry Dundas, the friend of Pitt, who held office from 1784 to 1801. The Act empowered the Board, if it considered the subject-matter of its deliberations concerning the declaration of war or the making of peace or negotiating with any of the native princes in India required secrecy, to send orders and instructions to the secret committee of the Court of Directors. The Governor-General and Council were prohibited (except in certain cases), without the express consent of the Secret Committee of the Court of Directors, either to declare war or to commence hostilities or to enter into any treaty for making war against any of the countries, provinces or states in India, or signing any treaties or guaranteeing possession of any country, province or state. In short, it enjoined upon the Governor-General and Council a policy of non-intervention.

THE CHARTER  
ACT, 1793

In 1793, when the Company's Charter expired, it was again renewed for twenty years. By the Charter Act of 1793, the monopoly of the Company for exclusive trade in the East was renewed for twenty years. This Act also introduced some changes in the constitution of the Government of India. The Board of Control was modified. The Court of Directors appointed a secret Committee of their own members through whom the Board of Control was to issue instructions to the Governors in India regarding questions of peace and war. The councils at Bengal, Madras and Bombay were remodelled. The appointments of the Governors and the Commander-in-Chief were vested in the Court of Directors subject to the approval of the Crown. The Directors retained their power of dismissing any of these officials. The Governor-General was empowered to override the majority of his Council "in cases of high importance and essentially affecting the public interests and welfare" or "when any measure shall be proposed whereby the interests of the Company or the safety and tranquillity of the British possession in India may in the judgment of the Governor-General be essentially concerned." A similar power was conferred upon the Governors of Madras and Bombay. The Governor-General was authorised "to superintend" the subordinate Presidencies in matters of war and signing treaties. All orders were to be expressed and to be made "by the Governor-General and Council." The Governor in Council at Madras first received legislative powers in 1800 by an Act which also established a Supreme Court of Judicature at Madras with judges appointed by the Crown. Bombay obtained legislative powers

in 1807 and a Supreme Court of Judicature in 1823.

The Company survived and the Directors still retained great powers of patronage. They also transacted the ordinary business of the Company in England. Before the renewal of the Company's Charter, Parliament generally held an exhaustive inquiry in the nature of an inquest into the affairs of the Company. One such inquiry resulted in the Fifth Report of 1812. The indefinite dominion derived from the Mogul Emperor in the form of *divani* was already overlaid by authority derived from Parliament. Hence the Charter Act of 1813, while continuing the Com-

pany in actual possession of its territories, distinctly asserted the sovereignty of the Crown over those territories. The territorial authority of the Company and its monopoly of trade with China were again renewed for twenty years, but the right of trade in India except in tea was thrown open to all British subjects. This Act established an office of a Bishop for India and an archdeacon for each of the Presidencies. It also authorised the expenditure of a lac of rupees on education and the encouragement of learning.

THE CHARTER ACT, 1813

In 1833, when the Charter of the Company was renewed for a further period of twenty years, extensive changes were introduced. The Charter Act of 1833 declared that the territories in India were held by the Company in trust for His Majesty. Its monopoly of trade with China was withdrawn and the Company ceased altogether to be a mercantile corporation.

It was enacted that no official communication should

be sent to India by the Court of Directors until it had first been approved by the Board of Control. The Governor-General of Bengal received the title of "Governor-General of India." His Council was enlarged by an addition of a fourth or extraordinary member who was not entitled to sit or vote except in meetings for making laws and regulations. He was to be appointed by the Directors, subject to the approval of the Crown, from amongst persons not servants of the Company. The first member was Thomas Babington Macaulay. The Governor-General in Council was empowered to make "laws and regulations for the whole of India," and legislative functions were withdrawn from Bombay and Madras. A Law Commission was appointed for drafting laws for India. It also directed that all Indian laws and also the reports of the newly constituted Law Commission should be laid before Parliament. A new presidency was created with its seat at Agra. (This clause was suspended two years later by an Act which authorised the appointment of a Lieutenant-Governor of the North-Western Province.) At the same time the Governor-General was authorised to appoint a member of his Council to be a Deputy-Governor of Bengal. Two new Bishops were constituted for Madras and Bombay. It was for the first time enacted that "no native of India shall by reason of his religion, place of birth, descent or colour be disabled from holding any office under the Company."

By this Act the sole legislative power was vested in the Governor-General in Council to the supersession of the powers formerly also enjoyed by Bombay and Madras, thus establishing legislative centralisation. The former Acts had brought the Presidencies of Bombay and Madras under the general superintendence

and control of the Governor-General in Council, thus already creating a sort of administrative centralisation. In the enlargement of the Council of the Governor-General for the purpose of legislation by the addition of an extraordinary member we have the beginning of the Indian legislature.

THE CHARTER  
ACT, 1853

The Company's Charter expired in 1853. By the Charter Act of 1853 the powers of the East India Company were again renewed but "only until Parliament shall otherwise provide." This Act effected other changes also. Six members of the Court of Directors out of eighteen were henceforth to be appointed by the Crown. The appointment of the ordinary members of the councils in India, though still made by the Directors, was to be subject to the approval of the Crown. The Commander-in-Chief of the Queen's Army in India was declared Commander-in-Chief of the Company's forces. The Council of the Governor-General was again remodelled by the admission of the fourth member as an ordinary member for all purposes, whilst six special members were added for the purpose of legislation only: namely one member from each Presidency, the Chief Justice of Bengal, and a puisne judge of the Supreme Court of Bengal. A Lieutenant-Governorship was created for the Lower Province of Bengal. A Law Commission was appointed in England to consider the reforms proposed by the Indian Law Commissioners. Finally, admission to the Civil Service was thrown open to public competition. This Act took away the right of patronage from the Directors. Patronage was henceforth to be exercised under rules made by the Board of Control. By 1853 the President of the Board of Control was its

sole member. The supremacy of the President did not mean that the Directors had no real power. The right of initiative was still with them. They were still the repository of knowledge of India and they still exercised substantial influence upon details of administration.

### THE THIRD PERIOD (1858–1919)

#### *British Parliament and the Government of India*

The mutiny of 1857 sealed the fate of the East India Company after a history of 250 years. The Mogul Emperor, accused of complicity in the mutiny, was deposed and his nominal sovereignty either passed to or was assumed by the British Crown. The Act for the Better Government of India, 1858, transferred the government from the Company to the Crown and vested in the Crown all the territories and powers of the Company and declared that India should henceforth be governed directly in the name of the Crown by its own servants. It created a new office of Secretary of State for India, to transact the affairs of India in England and to exercise all the powers formerly exercised either by the Directors or the Board of Control. It also established a Council of India consisting of fifteen members, nine of whom were to be those who had had long and recent service or residence in British India, with the object of providing the Secretary of State with information and advice upon Indian questions. Thus the Crown<sup>1</sup> (Parliament) became *de jure* as well as *de facto* sovereign

<sup>1</sup> The authority of the Crown under the English Constitution is exercised by or with the consent of Ministers who are responsible to Parliament.

of India.<sup>1</sup> This fact was further emphasised when the Queen, under an Act passed in 1876, adopted the style of Empress of India.

Since 1858 the Crown (Parliament) has exercised its authority and control over the Government of India through the Secretary of State, who is a member of the British Cabinet. Like other Ministers of the Crown he is responsible to Parliament for his official acts. Till March 1937 he discharged his functions with the help of the India Council. He had generally the power of over-riding his Council except in certain matters in which a vote of the majority in Council was necessary. The Governor-General in Council had to obey all orders received from the Secretary of State in Council. Thus in theory Parliamentary control over India was complete, but in fact it was rarely exercised. Indian affairs ever since the fall of the Coalition Ministry in 1783 were kept outside British party politics. During the whole period from 1858 to 1919 the interest of Parliament in Indian affairs was neither well-sustained nor well-informed. In fact Parliament, which became a direct guardian, proved only a sleepy guardian of Indian interests. During this period the Government of India was controlled by the Secretary of State in the name of Parliament, but its policy and acts remained generally unscrutinised and uncontrolled by Parliament except in a few cases in which England was primarily interested.

The structure of the Home Government of India introduced in 1858 continued without any modification till 1919. The size of the India Council was changed from time to time, but its functions remained the same.

<sup>1</sup> The important change effected in 1858 was not a transfer of sovereignty, but the resumption of a delegated authority to be exercised thereafter directly by the servants of the Crown.

At times its role was reactionary. The Government of India Act, 1919, effected certain changes in the Home Government of India with a view to carrying out the policy contained in the Declaration of August 20, 1917. These changes were merely consequential. The basic principle of Parliamentary responsibility for Indian affairs was not touched. With a view to stimulating the interest of Parliament in Indian affairs, the salary of the Secretary of State and the cost of his political establishment at the India Office were transferred to the British exchequer. He was authorised to relax his powers over Indian administration by rules in certain specified matters. A new post of High Commissioner for India, to do agency work, was created. The composition of the India Council was also modified. These were incidental changes. The position of the Secretary of State and the India Council in relation to the Government of India remained unaffected. On the contrary the responsibility of Parliament "for the welfare and advancement of the Indian peoples" was emphasised in the preamble to the Act of 1919. Provision was made for the appointment of a Statutory Commission to examine the working of reforms at the end of ten years, with a view either to extending or withdrawing the reforms.

The administrative machinery in India after 1858 was not substantially modified. But the legislative machinery was improved and enlarged. Till 1858 the legislatures were merely enlarged committees of the executives. The Indian Councils Act of 1861 enlarged the Governor-General's Council for the purposes of legislation, but its activity was strictly confined to legislation. The provincial councils were also enlarged. The Indian Councils Act of 1893 further

THE INDIAN COUNCILS  
ACTS, 1861, 1893

MORLEY-MINTO REFORMS

enlarged the central and provincial legislatures both in their composition and functions. The Morley-Minto Reforms, 1909, further enlarged the central and provincial legislatures. Their functions were also widened. The members were given power to ask supplementary questions, to move resolutions, to discuss the budget and to divide the House. Thus between 1861 and 1909 steps were taken to secure co-operation and consultation of the nominated representatives of the people. All these steps were necessitated by the growing political consciousness of the people. It is to be noted that the legislatures were during this period merely committees of the executives for the purpose of law-making. There was no definite intention of introducing Parliamentary Government in India. But it is true that all these measures since 1861 facilitated the introduction of a responsible government.

India's demand for political advance was not met by the Morley-Minto Reforms. The demand was renewed with emphasis during the War. With a view to meeting India's demand and in recognition of India's services to the United Kingdom during the War, on August 20, 1917, Mr. Montagu, the Secretary of State for India, made an announcement<sup>1</sup> to the House of Commons of the policy of His Majesty's Government towards India in the following terms:—

DECLARATION OF  
AUGUST 20,  
1917

“The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of

<sup>1</sup> This announcement was characterised by the joint authors of the M. C. Report as “the most momentous utterance ever made in India's chequered history.”

self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of local governments, and to receive with him the suggestions of representative bodies and others.

"I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be the judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility."

#### THE FOURTH PERIOD (1920-1935)

THE GOVERNMENT OF  
INDIA ACT, 1919

Mr. Montagu came to India and in the company of the Viceroy, Lord Chelmsford, toured the whole country. After ascertaining Indian public opinion they made their report. On their report Parliament passed the Government of India Act, 1919, which gave effect to the

policy contained in the Declaration of August 20, 1917. By this Act Dyarchy was introduced in the Provinces. In the transferred departments in the Provinces the control of the Secretary of State for India was relaxed, and to the extent to which it was relaxed it was transferred to Ministers who were appointed by the Governors from the elected members of the Legislature. However, no changes were introduced in the Central Government.

India was not at all satisfied with the reforms embodied in the Act of 1919. These reforms were denounced by the Indian National Congress as unsatisfactory and unacceptable. The first elections under the Act were boycotted by the Congress. The unsatisfactory character and imperfect operation of the reforms brought into existence a strong and well-organised political movement under the auspices of the Indian National Congress guided by Mahatma Gandhi. The political demand of India grew rapidly and the National Congress made a demand for complete independence in 1927. An all-parties conference drew up a constitution based on complete autonomy not necessarily outside the Empire. The insistent demand for political advance secured the appointment earlier than provided in the Act of 1919 of the Statutory Commission to report on the working of the reforms, under the chairmanship of Sir John Simon. This Commission was boycotted by Indians, as no Indian was appointed on it. In 1930 Gandhiji launched his Civil Disobedience Movement with the object, *inter alia*, of achieving political freedom. The Simon Commission presented its Report in 1930. It recommended complete responsible government in the Provinces; control of police and justice being transferred to Ministers.

THE SIMON  
COMMISSION,  
1928-30

The Legislatures were to be based on a wider franchise and the official *bloc* was to disappear. At the centre, it recommended the continuance and the preservation of full British authority and control. It also recommended the reorganisation of British India on a federal basis with a view to facilitating in future the development of an All-India Federation, when India as a whole, and not merely British India, would take her place among the constituent States of the Commonwealth of Nations united under the Crown. The Commission emphasised the importance of establishing contact with the States and envisaged a scheme of an All-India Federation.

Owing to the rapid progress of political events in India, the Report of the Simon Commission was not considered on its merits and the British Government summoned in London a Round Table Conference of the representatives of the different parties in England and in India, and of the Indian Princes, to consider the question of an Indian Constitution. When the first Round

ROUND TABLE CONFERENCES	Table Conference was in session the Princes suddenly declared their intention and eagerness to join the Federation. The Round Table Conference was called because it was felt that any constitution based on the recommendations of the Simon Commission would be unacceptable to India, hence it was necessary to consider afresh the whole problem of an Indian Constitution. It was also felt that without the grant of some responsibility at the centre there was no chance of India's accepting any constitution. When the first Round Table Conference was in session the Civil Disobedience Movement was at its height. The Gandhi-Irwin Pact was signed in the beginning of 1931 and Gandhiji attended the
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Second Round Table Conference in September, 1931, the Congress accepting an All-India Federation, central responsibility, and safeguards in the interests of India as the basis of the New Constitution. The Conference held a third session in 1933. In March, 1934, the British Government issued a White Paper containing the proposals for a New Constitution for India. These proposals included an All-India Federation—a union between Governors' autonomous Provinces, Commissioners' Provinces, and those Indian States whose rulers signified their desire to accede to the Federation by a formal Instrument of Accession. These proposals were fully examined by a Joint Select Committee of Parliament with the help of the Indian assessors. The Committee approved of the scheme of the White Paper subject to certain alterations and presented its Report in October, 1934. It was on the Report of this Committee that the Government of India Act, 1935, was passed.

**CONCLUSION** From this rapid historical survey it is clear that till 1858 the administrative machinery both in India and in England was meant to govern British India without any consultation or co-operation of the people of India. After 1858 the executive remained entirely responsible to Parliament. In governing the country it tried to know public feeling with a view to making its measures effective. In its nature it was a benevolent despotism tempered by the public opinion and haphazard interest of a remote democracy and at times influenced by public opinion in India. It is not untrue to say that till 1919 the executive remained supreme and independent both of the legislature and the people. It is true that from 1861 the legis-

latures were progressively enlarged and representation of the people was sought on an increasing scale. To quote the Montagu-Chelmsford Report: "The announcement of August 20, 1917, marks the end of one epoch, and the beginning of the new one. Hitherto, we (Englishmen) have ruled India by a system of absolute government; but have given her people an increasing share in the administration of the country and increasing opportunities of influencing and criticising the Government."

The growth of institutions in India can be traced through various stages. These stages of growth have been succinctly summarised in the Royal Proclamation of December 3, 1919: "The Acts of 1773 and 1784 were designed to establish a regular system of administration and justice under the Honourable East India Company. The Act of 1833 opened the door for Indians to public offices and employment. The Act of 1858 transferred the administration from the Company to the Crown and laid foundations of public life which exist in India to-day. The Act of 1861 sowed the seeds of representative institutions and the seed was quickened into life by the Act of 1909." The Act of 1919 entrusted representatives of the people with a definite share in government and pointed the way to full representative government.

India's constitutional progress is a measure of her political consciousness and the desire for a share in the government of the country growing into a demand for responsible government. It may be stated that the process of introducing responsible government in the Provinces begun under the Act of 1919 is completed under the Act of 1935 which has introduced full Provincial Autonomy and has made the Provinces

autonomous federating units deriving their authority directly from the Crown. Partial responsibility is to be introduced at the centre and in fullness of time complete responsibility will follow. It is perfectly true that even in the Provinces the responsible Government is not a true responsible government in the strict sense of that term and that the partial responsibility at the centre is of a shadowy nature, but it is also true that the New Constitution both in the Provinces and at the Centre is intended for the evolution and finally the establishment of a true responsible government both in the Provinces and at the Centre under the Crown.

The Marquess of Linlithgow has summed up the whole historical trend in these words: "The unitary system of government for so long the supreme authority in India is disappearing. In its place great Autonomous Provinces make their appearance; and finally comes the Federation, crowning the entire structure and embracing and unifying within its hold and ample scope the common life and aspirations of one-fifth of the human race dispersed over a sub-continent as large as Western Europe. Such will be the structure of Government in India which when the task is completed will meet the gaze of a watching world: a spectacle whose dignity and grandeur will be not unworthy of this great and famous country."

## CHAPTER II

### EVOLUTION OF AN ALL-INDIA FEDERATION

“Our conception of the eventual future of India is a Sisterhood of States, self-governing in all matters of purely local or provincial interest, in some cases corresponding to existing provinces, in others perhaps modified in area according to the character and economic interests of their people. Over this congeries of States would preside a central government increasingly representative of and responsible to the people of all of them; dealing with matters both internal and external, of common interest to the whole of India; acting as arbitrator in inter-state relations, and representing the interests of all India on equal terms with the self-governing units of the British Empire. In this picture there is a place also for the Native States. It is possible that they too will wish to be associated for certain purposes with the organisation of British India in such a way as to dedicate their peculiar qualities to the common service without loss of individuality.”

M.C. REPORT.

India is in fact, as well as by legal definition, one geographical whole. It comprises an area of 1,570,000 square miles with a population of 350 millions. In its political structure India is divided between British India and the Indian States. Thus politically there are two Indias. British India means all territories comprised within the Governors' Provinces and the Chief Commissioners' Provinces. It covers about 820,000 square miles, or 55 per cent of the total area. It has a population of about 260 millions or 74 per cent of the total population. It has been subject to British rule and has pursued its constitutional development as a part of the British Empire.

### THE NATIVE STATES

The other India of the Indian States covers about 700,000 square miles or 45 per cent of the total area. It has a population of 80 millions or 26 per cent of the total population and consists of 600 units which are not British territories and whose subjects are not British subjects. They are ruled by hereditary Princes or Chiefs. These 600 Native States include 109 States, among them the great States like Hyderabad, Mysore, Baroda, Kashmir, Gwalior and Travancore, the rulers of which are entitled to a seat in the Chamber of Princes; one hundred and twenty-six which are represented in the Chamber by twelve of their own order elected by themselves; and some three hundred States, Jagirs and others which are only States in the sense that their territories, sometimes consisting only of a few acres, do not form part of British India. The important States enjoy within their own territories all the principal attributes of sovereignty, but their external relations are in the hands of the Paramount Power. The sovereignty of others is of a more restricted kind. Over some the Paramount Power exercises in varying degree administrative control.<sup>1</sup>

### PARAMOUNTCY

The relationship of the Crown, exercised through the Governor-General as Viceroy, is called Paramountcy and is based sometimes upon treaties and sanads, but mostly on the political usage of the Political Department of the Government of India. The nature of this relationship is not yet exactly defined. The Butler Committee, finding it

<sup>1</sup> J. S. C. Report.

difficult to define its exact nature, states that "Paramountcy must remain paramount." The nature and implications of this relationship have varied from time to time. In the words of the M.C. Report: "The policy of the British Government towards the States has changed from time to time, passing from the original plan of non-intervention in all matters beyond its own ring-fence to the policy of 'subordinate isolation' initiated by Lord Hastings; which in its turn gave way before the existing conception of the relation between the States and the Government of India, which may be described as one of union and co-operation on their part with the Paramount Power. In spite of the varieties and complexities of treaties, engagements and sanads, the general position as regards the rights and obligations of the Native States can be summed up in a few words. The States are guaranteed security from without; the Paramount Power acts for them in relation to foreign powers and other States, and it intervenes when the internal peace of their territories is seriously threatened. On the other hand the States' relations to foreign powers are those of the Paramount Power; they share the obligations for the common defence; and they are under a general responsibility for the good government and welfare of the territories." Lord Reading, in a letter to His Exalted Highness the Nizam in 1926, succinctly summed up this relation when he stated that: "The sovereignty of the British Crown is supreme in *India* . . . It is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order *throughout India*."<sup>1</sup>

<sup>1</sup> The italics are those of the author of this book.

The Native States present a striking diversity of features—geographical, political and economic. Some thirty possess consultative legislative councils. Forty of them have established Courts on the British India model, separating in some cases executive from judicial functions. Most of them have, as already stated, seats in the Chamber of Princes. The Chamber of Princes is a purely deliberative body and has neither executive nor legislative functions. It is meant to maintain the contact of the States with the Crown and British India.

A Native State normally manages its own internal affairs, including the making and administration of laws for its subjects and the imposing and spending of its revenues. The Crown, as already stated, controls all foreign relations and assumes responsibility for all British and foreign subjects. There is usually a British Resident or Agent whose duty it is to offer advice to the ruler and to report to the Political Department of the Government of India. The Crown, as Paramount Power, may intervene in cases of gross misgovernment or to preserve the dynasty or to maintain peace in British India. The Crown at present acts through the Governor-General in Council.

Both Indias, British India and the India of the Native States, are respectively under the sovereignty and paramountcy of the British Crown, but they have remained separate politically owing to historical accidents. The States have maintained political isolation from British India and have no direct constitutional relationship with British India, except that the Governor-General in Council deals with them as a representative of His Majesty, at the same time exercising his executive authority over British India.

With all the differences in their status, character, size and conditions there are vital and essential racial and cultural affinities, common historical background and common interests between the States and the British India Provinces. A mere glance at the map of India shows that the States dovetail into various provinces of British India. But apart from this geographical unity, there are some more important factors to be noted. Firstly, the States and British India are closely interwoven. The composition of their populations is not different. Thus there is an essential unity in diversity in India regarded as a whole. Secondly, there is political unity in the sense that both the States and British India owe common allegiance to the Crown. Thirdly, there is economic unity. Fourthly, various matters common to British India Provinces are also to a great extent those in which the Native States are interested—defence, tariffs, exchange, opium, salt, railways and posts and telegraphs. Fifthly, the unity imposed upon India by the external forces of Great Britain is reinforced by an increasing sense of Indian Nationality. Moreover, both Indias have a common religious and cultural heritage. Thus the desirability of establishing an All-India polity cannot be doubted. During recent years the States have been making claims for a share in the customs revenue and demanding a voice in the formulation of the fiscal policy of British India as it also affects them indirectly. The whole question was considered by the Butler Committee, which pointed out the necessity for common action on matters which equally affect both British India and the States. The conception of an All-India polity was already present to the minds of Mr. Montagu and Lord Chelmsford.

It was recognised that the ultimate constitution of India must be federal, for it is only in a federal constitution that units differing so widely in constitution as the Provinces and the States can be brought together while retaining their internal autonomy. This was recognised in the Montagu-Chelmsford Report: "Granted the announcement of August 20, 1917, we cannot at the present time envisage its complete fulfilment in any form other than that of a congeries of self-governing Indian Provinces associated for certain purposes under a responsible Government of India; with the possibility of what are now the Native States of India being finally embodied in the same whole in some relation which we will not now attempt to define. For such an organisation the English language has no word but 'Federal.'" The Simon Commission, however, considered the formation of an All-India Federation a remote possibility and recommended the reconstruction of the British India Constitution on a federal basis. The Commission stated: "It might be possible to visualize the future of federation in India as the bringing into relationship of two separate federations; one composed of the elements which make up British India, the other of the Indian States. . . . We are inclined ourselves to think that the easier and more speedy approach to the desired end can be obtained by reorganising the constitution of India on a federal basis in such a way that individual States or groups of States may have the opportunity of entering as soon as they wish to do so." The States were also not prepared to consider the question of an All-India Federation seriously there and then. The recommendations of the Simon Commission, which excluded the grant of responsibility

at the centre, even in a restricted form, were not acceptable to India. The British Government felt that any constitution without some form of responsibility at the centre would not be accepted. The Princes felt that, in the long run, the future of their States would be materially influenced by the introduction and working of responsible government in British India. They realised that their interest in the constitutional progress of British India was not that of detached spectators but of fellow-Indians. Apprehensive of the possible reactions and repercussions in their States of the political developments in British India, the Princes suddenly decided to enter the Federation and to play their part in India's constitutional progress. It is a matter of speculation as to why the Princes suddenly decided to enter the Federation. It is alleged that they were prevailed upon by British statesmen who could not resist the grant of some responsibility at the centre. In the words of the Joint Select Committee: "Ruling Princes, as members of a Federation, may be expected to give steadfast support to a strong and stable central government, and to become helpful collaborators in policies which they have sometimes in the past been inclined to criticise or even obstruct." The Princes declared their intention to join the Federation during the session of the First Round Table Conference in 1930, which laid down three fundamental mutually interdependent principles of the New Constitution. They were (1) All-India Federation, (2) Responsibility at the centre, (3) Safeguards in the interests of India. Pursuant to the Gandhi-Irwin Pact, the Congress accepted these basic principles and Gandhiji attended the Second Round Table Conference in 1931. As a result of the labours of

the three Round Table Conferences Parliament issued a White Paper containing the proposals for a New Constitution for India. Those proposals, as already stated, were examined by a Joint Select Committee with the help of the Indian assessors. A Bill was drafted in accordance with the recommendations of the Committee, and the Government of India Act, 1935, was passed on August 2, 1935. This Act creates an All-India polity.

The States demanded that the rights and obligations of the Paramount Power should not be assigned to persons who are not under the control of the Crown. Accordingly the Government of India Act, 1935, separates the offices of the Governor-General and Viceroy, though it is intended that the same person shall continue to hold both offices. The Crown relations of Paramountcy with the Princes will be conducted by the Viceroy as such representative of the Crown alone.

## CHAPTER III

# THE FEDERATION: THE FEDERATION OF INDIA AND ITS FEATURES

### I. Federation

#### CONDITIONS AND AIMS OF FEDERATION

According to Professor A. V. Dicey, a Federal State requires for its formation two conditions. Firstly, there must exist a body of States<sup>1</sup> or Provinces so closely connected by locality, by history, by race or the like as to be capable of bearing in the eyes of their inhabitants an impress of common nationality. A second condition is the existence of a very peculiar state of sentiment among the inhabitants of the States or Provinces which it is proposed to unite. They must desire union but must not desire unity. The sentiment which creates a Federal State is the prevalence throughout the citizens of the States of two apparently inconsistent feelings—the desire for national unity and the determination to maintain the independence of each State. “The aim of Federation is to give effect as far as possible to both these sentiments.” Both these conditions are to some extent satisfied in India.

<sup>1</sup> A State is an organised section of humanity occupying a certain territory. It is an absolutely independent unit. Internally there is no limit to its lawful power and it renders no political obedience to any outside authority.

### WHAT IS A FEDERATION?<sup>1</sup>

A Federation is a union or association of political units (States or Provinces) formed mainly for the purpose of performing certain functions on behalf of all. A federal union means the coming together of independent States which, while preserving their identities, look to the centre to deal with matters common to all. Thus a federation is essentially a result of an agreement or a pact between the federating units to place in the hands of some central body duties and powers to be exercised by it on behalf of them all, while the constituent units retain unimpaired their autonomous authority in other respects.

### ESSENTIAL CHARACTERISTICS OF A FEDERATION

There are three dominant characteristics of a Federal Government. They are: (i) supremacy of the Constitution, (ii) distribution of the powers of government among bodies with defined powers, and (iii) the authority of the Federal Court to act as interpreter of the Constitution.

(i) A Federal State derives its existence from the Constitution. The Constitution contains the terms and conditions of the compact between the federating States on the one hand and the newly-established Government on the other hand. Each Government whether State or Federal exercises all its executive,

<sup>1</sup> What is a Federal Government?

When two or more sovereign or independent States mutually agree not to exercise certain powers incident to their several sovereignties, but to delegate the exercise of those powers to somebody chosen by them jointly, there is said to be a Federal union of those States, and the body to whom the exercise of such powers is delegated is called the Federal Government.

legislative and judicial powers in accordance with the provisions of the Constitution. The Constitution is written and rigid.<sup>1</sup>

(ii) DISTRIBUTION OF POWERS

There is a distribution of powers between a Central Government affecting the whole territory and population and a number of federating governments affecting particular areas and the persons and things within. Generally the powers which affect the life of the nation as a whole are given to the Central Government and those which affect the matters of local concern are reserved to the States or Provinces.

(iii) AUTHORITY OF THE FEDERAL COURT TO INTERPRET THE CONSTITUTION.

This characteristic is a natural consequence of the first two. The Federal Constitution being the supreme law of the land embodying the definite terms of the pact between the Central Government and the federating governments, it is necessary that there should be some agency to uphold the Constitution and to keep the two governments within their proper limits. This is done by the Federal Court, which is at once the custodian and the interpreter of the Constitution.

To sum up, federation presupposes a desire for some form of union among independent States, which though they desire union for certain purposes, nevertheless wish to preserve their identity and some measure of independence. It follows that a federal constitution must be a rigid constitution. There must be distribution of powers between the Federal Government and

<sup>1</sup> A rigid constitution is one which can be amended only by a special machinery, distinct from the machinery of ordinary legislation.

the governments of the States forming the Federation. There must be also special machinery for constitutional changes, and the court of law which can prevent the Federal and State governments from encroaching upon each other's powers and can declare legislation void on the ground of excess of power.

## II. The All-India Federation and Its Features

The All-India Federation contained in the Government of India Act, 1935, exhibits all the normal characteristics of a Federal Government. There is a written and rigid constitution with a division of powers between the Federal and the Provincial Governments. There is also a Federal Court whose duty it is to secure the due observance of the limits placed on the Federal and Provincial Governments and the legislatures. But there are some special features of the Indian Federation resulting from the peculiar political conditions of India.

These features are :—

(i) In all federations, independent units are united for certain common purposes. Thus a number of independent political units get transformed into a single State for external purposes. Federalising has been normally a process of uniting. In India, federalising has been a process of breaking up. There has been already one centralised government with other subordinate governments. For the purpose of federalising it is broken up into eleven autonomous units. Even the States have been under the suzerainty of the Crown. So the federating units which are all under the Crown have been already for external purposes one State.

Thus the historical process of formation of a federation in India has been just the reverse of what it has been in other countries, and the aims which brought other federations into existence have also not been operative in India. Other federations are formed by the constituent units, the Indian Federation is created by the British Parliament.

(ii) In a federation, generally, the status and character of the federating units are similar. The Indian States are wholly different in status and character from British Indian Provinces. The States are under personal rule, the Provinces have more or less responsible government. The representatives of the States in the Federal legislature are the nominees of the Rulers, those of British Indian Provinces are elected by the people. In a federation there is a double citizenship, Federal and State or provincial. In the Indian Federation the subjects of the States are not citizens of the Federation and are not in the enjoyment of the same civic rights as those enjoyed by the citizens of British Indian Provinces. Thus the Indian Federation is a union between autocratic rulers and more or less democratic governments. There is no common citizenship for all the citizens of the Federation.

(iii) The range of the federal powers is not identical in all respects in all federating units of the Indian Federation. It is identical in British Indian Provinces. In the States, it depends upon the terms of the Instrument of Accession of each State. Thus there is an obvious anomaly: a Federation composed of disparate constituent units in which the powers and authority of the Central Government differ as between one constituent unit and another.

(iv) The Indian Federation has no power of amending the Constitution. The power of amendment is vested in the British Parliament.

(v) In other federations the Upper Chamber generally secures the equality of status of the federating units by allowing an equal representation in it of all units irrespective of their size and population. The Lower Chamber secures the unity of the Federal State. Its representatives are elected by the citizens of the federating units as a whole. Thus one chamber is intended to secure equality and autonomy of the units and the other to secure national unity. In the Indian Federation both these principles are not observed. There is no equality of representation of the units in the Upper Chamber, and curiously its election is direct while in other federations it is indirect. In the Lower Chamber the election instead of being direct is indirect. There is no direct and organic contact between the citizens and the Federation.

(vi) In the relation between the Central Government and the units there is an impress of the fact that India had a strong centralised Government, and the superintendence and control of the Central Government over the Provinces is still there in the background, not only for federal purposes but also for provincial purposes.

These are some of the special features of the Indian Federation. It is doubtful whether one can correctly and strictly call this new All-India polity a federation in the sense in which it is understood by political theorists and constitutional lawyers. Some Indians have doubted the wisdom of creating such a polity for India. It is pointed out that it will prevent India's progress. It is urged that having regard to the position of the States in the Federation and their relations

with the Paramount Power and the rigidity of the constitution, the establishment of a true responsible government at the centre will be difficult, if not impossible. One may object to the exact nature and to some of the provisions of the New Constitution, but one cannot envisage the Constitution for the whole of India in any form other than a federation.

## CHAPTER IV

### THE FEDERATION AND THE CROWN

“The idea of an All-India Federation is in many ways one of the most striking in the history of the world, considering the area to be covered, and the differences of language, of religion, of race and of historical background of the people and the territories which the realisation of the ideal of federation will continue in a single political body.”

THE MARQUESS OF LINLITHGOW in a speech at Benares, July 31, 1936.

**AREA OF  
FEDERATION** India includes British India, all territories of any ruler under the suzerainty of His Majesty, all territories under the suzerainty of such a ruler and the tribal areas. British India is made up of the Governors' Provinces and the Chief Commissioners' Provinces. The territories of these Provinces are vested in His Majesty and are under the direct authority of the Crown. The territories of the Indian rulers are under the suzerainty or paramountcy of the Crown. The tribal areas, which include the frontier lands of India, are under the protection of the Crown. Thus the whole of India is either under the direct authority or suzerainty or protection of the British Crown.

The Government of India Act, 1935, provides a polity or a federation for the whole of India.

**FEDERAL  
AUTHORITY** The authority and the suzerainty of the British Crown, which was before 1858 exercised by the East India Company, and after 1858 was vested in and exercised by the Secretary of State

and the Governor-General in Council (and in some respects by the Provincial Governments under devolved authority), is under the Act of 1935 resumed by His Majesty and is to be exercised by His Majesty through his representatives: the Governor-General, in relation to the Federation, and the representative of the Crown in relation to the States. Thus the two aspects of the Crown are distinguished. The two positions may be held by the same person, the Governor-General, but they may be separated if in practice the Governor-General finds it difficult to exercise both functions.

The executive authority of the Federation is vested in the Governor-General as the representative of the King. He is appointed by commission under sign manual. He also exercises such prerogative rights of the Crown as His Majesty has delegated to him; the remaining prerogative rights, such as those of making treaties, granting honours, etc., are exercised by the King himself. He draws an annual salary of Rs. 250,800. He is also paid travelling and other allowances to enable him to discharge with dignity the duties of his office. This executive authority includes the supreme command of the military, naval and air forces in India. But His Majesty has also appointed a Commander-in-Chief in India to exercise in relation to these forces certain powers which are assigned to him. As regards the States which have acceded to the Federation the executive authority of the Governor-General extends only to such matters as fall within the federal sphere and are agreed to by the States in their respective Instruments of Accession.

The rights of Paramountcy of the Crown over the States are to be exercised by the representative of the

Crown who is in practice the Governor-General himself. It is to be noted that when he acts as the representative of the Crown in relation to the States, his capacity is different and distinct from that of the Governor-General.

### THE UNITS OF FEDERATION

The Federation is made up of (i) Governors' Provinces, (ii) Chief Commissioners' Provinces, and (iii) the States which have acceded to the Federation. The nature and status of these federating units differ widely. Hence the relation of the Federal executive and legislature to these units also differs in essentials. With regard to the Governors' Provinces the relation is strictly on federal principles; with regard to the States it is not on strict federal principles; whilst the Commissioners' Provinces are entirely subject to the authority of the Governor-General, thus having only a nominal status of federating units. Again the powers of the Federation in relation to the Provinces cover a wide field and are identical in case of each Province, while in relation to the States there is no identical range of federal powers.

(i) **THE GOVERNORS' PROVINCES** The number of Governors' Provinces is increased under the Act by the addition of two new provinces of Orissa and Sind. The province of Orissa is constituted by extending the boundaries of Orissa by joining to it areas in Madras and the Central Provinces occupied by Oriya people. Sind is separated from Bombay. Thus there are eleven Governors' Provinces:—Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa and Sind. The

Act of 1935 authorises the creation of other Provinces by Order-in-Council<sup>1</sup> after consultation of the federal executive and legislature and the authorities of any Province affected. The boundaries of the Provinces can be similarly varied. Berar, though under the sovereignty of the Nizam, is to be administered with the Central Provinces as one Province.<sup>2</sup> Burma is separated from British India.

These Provinces are made autonomous and are included in the Federation under the Act.

(ii) **THE CHIEF COMMISSIONERS' PROVINCES**      There are six Chief Commissioners' Provinces:—British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands, and the area of Panth Piploda (now given that status). Other Commissioners'

<sup>1</sup> Order-in-Council is an order issued by the Sovereign on the advice of the Privy Council or more usually on the advice of a few selected ministers. In practice it is only issued on the advice of ministers of the Crown who are responsible to Parliament for their actions in the matter.

They are of two kinds:

- (i) Those made in virtue of the Royal Prerogative;
- (ii) Those which are authorised by Act of Parliament.

Such orders are largely used for the purpose of completing the administration part of Acts of Parliament. All Orders-in-Council made in relation to the New Constitution of India belong to the second category, being authorised by the Government of India Act, 1935. They provide for carrying out the provisions of the Act.

<sup>2</sup> This is under the agreement between His Majesty and H.E.H. the Nizam signed on October 24, 1936. The agreement clearly recognizes the sovereignty of the Nizam. Henceforth the Nizam and his successors are to be known as "His Exalted Highness the Nizam of Hyderabad and Berar"; the heir apparent is granted the title of "His Highness the Prince of Berar." H.E.H. the Nizam has the right to be consulted in connection with the appointment of the Governor of the Central Provinces and Berar, to fly his flag alongside the British flag in Berar, to confer Hyderabad titles on Beraris, to hold durbars in Berar and to maintain an agent at the seat of the C.P. Government. No objection will be raised by His Majesty to the *khutha* being read in any mosque in Berar in the name of His Exalted Highness. His Majesty continues to pay to His Exalted Highness the sum of Rs. 25 lakhs per annum.

Provinces may be created under the Act. Aden is separated from British India and is to be governed as a Crown Colony, but appeals from its court lie to the High Court of Bombay.

These Provinces are also included in the Federation as separate units.

(iii) **THE STATES** As the States are, in relation to British India, sovereign units, their accession to the Federation can be and is only a voluntary act on the part of their rulers. The Constitution Act does not itself make any Indian State a member of the Federation, but it only prescribes the method whereby a State may accede and the legal consequences which flow from the accession. There is no compulsion on the rulers to enter the Federation. They can enter or stand aside from the Federation as they think fit. The Federation is to be constituted by a Proclamation made by His Majesty. Two conditions are to be fulfilled before such a Proclamation can be made: (1) an address for that purpose must be presented to the King by each House of Parliament, (2) rulers of States representing not less than half the aggregate population of the States and entitled to not less than half the seats allotted to the States in the federal upper chamber must have signified to His Majesty their desire to accede to the Federation.

**INSTRUMENT OF ACCESSION** The ruler of a State has to signify to the Crown his willingness to accede to the Federation by executing an Instrument of Accession.<sup>1</sup> Accession is effected by the King's

<sup>1</sup> An Instrument of Accession is a document which contains the terms and conditions on which a ruler of a State accedes to or enters the Federation. It is executed by the ruler and is binding on his heirs.

acceptance of such an Instrument executed by the ruler personally whereby he declares that he accedes to the Federation with the intent that the King, the Governor-General, the federal legislature, the Federal Court, and any other federal authority shall by virtue of his Instrument but subject to its terms for the purpose of the Federation exercise in relation to his State such functions as may be vested in them. The ruler also assumes the obligation to give effect to the provisions of the Act within his State. Thus by the terms of the Instrument he permanently and irrevocably limits his sovereignty. Accession can be conditionally executed by a ruler before the attainment of the Federation.

The Instrument must signify the matters on which the Federation is to have powers to legislate for the State and also the limitations on the federal legislative and executive powers in relation to the State. The extent of federal legislative power may be enlarged by a subsequent Instrument but may not be diminished. The federal legislature has no power over the question of the accession of States for twenty years from the date of the Federation. After that period the request for accession of any ruler is to be sent through the Governor-General only if both chambers of the federal legislature have presented an address to the King asking that that State should be admitted to the Federation. Every Instrument must be laid after acceptance before both Houses of Parliament. The King is not obliged to accept any Instrument. He may not accept any Instrument whose terms are inconsistent with the scheme of the Federation. The King may also not accept the Instrument of a State which is unwilling to accept the greater portion of the subjects in the federal list.

Instruments of Accession should be as far as possible in common form as regards terminology. A draft form of Instrument has been prepared with the Act for the guidance of the States.

The rights and obligations of the Crown in respect of the States, apart from the control given to the Federation under Instruments of Accession, remain unaffected by the Act. As the Crown's representative will not control any forces, if he needs the aid of such forces for the discharge of his duties towards the States, he is entitled to requisition forces from the Governor-General. As the two posts of the representatives of the Crown in India, viz., the Governor-General and the representative of the Crown in relation to the States, are in practice held by one person, there is no possibility of friction. Provision is made for the jurisdiction of the Federal Government over areas in the States which are under the direct control of the Federation.

## CHAPTER V

### THE CENTRAL OR FEDERAL EXECUTIVE

An All-India Federation is inevitable. It is a recognition of India's geographical and political unity.

"Ruling Princes, as members of a Federation, may be expected to give steadfast support to a strong and stable Central Government, and to become helpful collaborators in policies which they have sometimes in the past been inclined to criticise or even obstruct."

J. S. C. REPORT.

"Whether a federation built on incoherent lines can co-operate successfully is wholly conjectural; if it does, it will probably be due to the virtual disappearance of responsibility and the assertion of the controlling power of the Governor-General backed by the conservative elements of the States and of British India."

A. BERRIEDALE KEITH. *A Constitutional History of India.*

"A system (federalism) meant to maintain the *status quo* in politics is incompatible with schemes for wide social innovation."

A. V. DICEY.

#### I. Historical

Each of the three settlements of the East India Company at Calcutta, Bombay and Madras was from the beginning administered by a President or Governor and a Council. The three Presidencies were independent of each other and each government was absolute within its limits, subject to the distant and intermittent control of the Court<sup>\*</sup> of Directors. As the need for a common policy for all settlements was soon felt, it was decided to create one supreme government in the country. The grant of the *divani* by the Mogul Emperor to the East India Company in 1765,

made Bengal the predominant Presidency, and the Regulating Act converted its Governor in Council into a Governor-General in Council and gave him superintending authority over Bombay and Madras. Under the Regulating Act the Council had three members in addition to the Governor-General. The control of the Governor-General in Council over the other Presidencies was, in fact, not very effective. The Charter Act of 1833 made the Governor-General of Bengal the Governor-General of India. A fourth member, being the Law member, was added to the Executive Council only for the purposes of legislation. The control of the Governor-General in Council over other Presidencies was made complete and effective. The Charter Act of 1853 made the Law member an ordinary member of the Executive Council. In 1861, a fifth member, being the Finance member, was added to the Council. A member for Public Works was added in 1874 and converted in 1904 into a member for Commerce and Industry. In 1911, a member for Education was added. Thus the Governor-General in Council constituted the Central Executive.

## **II. Pre-Federation or Central Executive**

The Central Government or the Central Executive authority in British India, both in civil and military matters, is the Governor-General in Council.

### **THE GOVERNOR-GENERAL**

The Governor-General is appointed from amongst the most prominent public men in Great Britain for a period of five years, during which he may be granted leave of absence once only and for not more than four

months. He draws a salary of Rs. 2,56,000 per year. "He occupies the most responsible as it is the most picturesque and distinguished office in the overseas service of the British Crown." He has a direct personal share in the main burden of the Government.

#### HIS POWERS AND RESPONSIBILITIES

Generally he carries out his functions with the guidance and concurrence of his Executive Council, but he can override it under certain circumstances. He can dissolve either chamber of legislature. If in special circumstances he thinks fit, he can extend its life. He can secure the passing of legislation rejected by either or both chambers by certifying that its passing is "essential for the safety, tranquillity or interest of British India." With the assent of his Council he can restore grants refused by the Assembly. He can on his sole initiative authorise such emergency expenditure as he thinks to be necessary for the safety or tranquillity of British India. He may withhold his assent to any Bill, or reserve such a Bill for His Majesty's pleasure. Further he has power in an emergency, without consulting the legislature, to legislate by ordinance, having effect for not more than six months. His previous sanction is required for the introduction of certain classes of Bills in the central legislature. He decides what items of the central expenditure fall within the non-votable category. He nominates a number of official and non-official members to the central legislature. He is in constant communication with the Governors of the Provinces, and no new policy of any vital importance is adopted by them without their consultation with,

and with the general concurrence of, the Governor-General.

He is also the Viceroy. He exercises the delegated prerogative rights of the Crown. He has the direct personal charge of the relations of India with foreign countries and of British India with the Indian States. All decisions of importance in connection with the Indian States, though issued in the name of the Government of India, are really a special concern of the Viceroy. The Viceroy is the link between British India and the Indian Princes.

**HIS RESPONSIBILITIES  
TO THE SECRETARY  
OF STATE**

The Governor-General is at all times in intimate relations and consultation with the Secretary of State for India, who is a member of the British Cabinet. He keeps him fully informed of Indian events through regular correspondence by letters, cables and radio. The Governor-General in Council has to pay due obedience to all such orders as he may receive from the Secretary of State in Council. The Secretary of State in Council has the powers of control over Indian finance, legislation and administration. Thus the British Parliament secures and exercises its supervision over British India through the Secretary of State.

There is no other political functionary in the world who has such powers and privileges as the Governor-General of India. "The constitutional monarch of the United Kingdom reigns but does not rule, the President of the United States of America rules but does not reign, the President of the French Republic neither reigns nor rules," whilst the Governor-General of India both reigns and rules.

## THE GOVERNOR-GENERAL'S EXECUTIVE COUNCIL

There is no limit to the number of members of the Governor-General's Council. At present it consists of seven members in addition to the Governor-General. The seven members are the Army member (Commander-in-Chief), Home member, Finance member, Law member, Commerce member, member in charge of Education, Health and Lands, and member in charge of Industry and Labour.

The Commander-in-Chief controls Army headquarters and is in charge of a civil department called the Army Department. The Home member is in charge of the Home Department, which deals with the all-India Civil Services and with such subjects as Police, Prisons and judicial matters to the extent to which they affect the Central Government. The Finance member deals with all matters relating to central finance, currency exchange and banking. The Law member, who is the head of the Legislative Department, is responsible for the drafting of Government bills. He advises the Government on legal questions. The Commerce member is in charge of the Commerce Department and also the Railway Department which functions through the Railway Board. The Education member is concerned with higher education, local government, agriculture, forests, etc., so far as these things touch the central administration. He also deals with questions concerning the position of Indians in other parts of the Empire. The member in charge of Industry and Labour deals with the Posts and Telegraphs, irrigation, factories, civil aviation and labour and industry. The Viceroy himself holds the portfolio of the Foreign and Political department.

The members of the Council are appointed by Warrant under the Royal Sign Manual. Three of them must be persons who have been for at least ten years in the service of the Crown in India. These are invariably senior members of the Indian Civil Service. The Law member must be a barrister of England or Ireland or an advocate of the Faculty of Advocates in Scotland or a pleader of an Indian High Court of at least ten years' standing. In practice out of the seven members three are Indians. Every member of the Executive Council is a member of one or other chamber of the Central legislature and has the right of attending in and addressing the chamber to which he does not belong, though he cannot be a member of both. They are appointed for a term of five years. Their salaries are fixed and are not subject to the vote of the legislature.

MEETING OF  
THE COUNCIL

The Governor-General presides at the meetings of his Council. In his absence the member whom he has appointed to be its vice-president presides. All orders are signed by the Secretary to the Government of India. In case of a difference of opinion, the decision of the majority is binding, and in case of equality of votes the Governor-General or other person presiding has a second or a casting vote. But if the proposed measure is in conflict with the view of the Governor-General as to what is essential for the safety, tranquillity or interest of British India, he may on his own authority and responsibility over-rule the decision of the Council. In such a case any two members of the dissentient majority may ask that the matter be reported to the Secretary of State and that the report may be accompanied by

copies of any minutes made by the members of the Council. Ordinary matters are disposed of by different departments, but all important decisions of the Government of India are made by the Council, which meets at short intervals.

Thus the central executive is neither removable by nor responsible to the legislature. It is responsible to the Secretary of State and to Parliament. Having regard to the powers of the Governor-General in Council to restore the rejected items of expenditure in certain cases, and the power of certification of bills by the Governor-General, and also his power of issuing ordinances, it is not too much to say that the central executive is all-powerful and is practically independent of the legislature. This independence is secured by the various provisions already mentioned. The legislature, however, can and does exercise an influence upon policies in a marked and increasing degree.

### III. The Federal Executive

Under the New Constitution the Governor-General is given the executive power of the King. This power extends to all matters in respect of which the federal legislature can legislate in British India. But in the federated States it extends only to matters over which the Federation has legislative powers by virtue of the Instruments of Accession of the States.

#### ADMINISTRATION OF FEDERAL AFFAIRS

COUNCIL OF  
MINISTERS

The exercise of the federal authority is in a three-fold manner: Firstly, a part of it is to be exercised by the Governor-General with a Council of Ministers, not exceeding ten in

number, chosen and sworn by him from the members of the legislature to aid and advise him for the administration of federal subjects other than (1) defence, (2) external affairs, (3) ecclesiastical affairs, (4) the administration of the tribal areas, and (5) matters left by the Act to the Governor-General's discretion. Ministers hold office during his pleasure and may be dismissed by him acting in his discretion. He fixes their salaries until determined by the legislature. Their salaries may not be varied so long as they are in office. Ministers cease to hold office if for a period of six consecutive months they are not members of one of the chambers. No court may inquire into the advice given by ministers. In every case, it rests with the Governor-General to decide whether or not he is required to act in his discretion or to exercise his individual judgment.<sup>1</sup>

THE GOVERNOR-GENERAL'S  
SPECIAL RESPONSIBILITY  
IN NON-RESERVED SPHERE

Secondly, a part of the federal authority in respect of certain specified subjects which are under the ministers is exercised by the Governor-General in his individual judgment. In respect of these matters he is declared to have a

<sup>1</sup> The distinction between "Governor-General acting in his discretion" and "Governor-General acting in his individual judgment" should be carefully noted. When the Governor-General acts in his discretion, it is a case where he acts without being under the obligation of consulting his ministers at all, and where he acts perfectly freely. On the other hand, where he acts in his individual judgment, that is a case where he has to consult his ministers, but is not obliged to accept their advice, and, therefore, his final decision may or may not agree with the advice tendered to him by his ministers. In short, the words "in his discretion" are used in respect of powers and functions outside the ministerial field, and the words "individual judgment" are used in respect of powers within the area in which, normally in ordinary times, the Governor-General would act on the advice of his ministers.

special responsibility and is required to exercise his individual judgment. His ministers will advise, but the decision rests with him. He is at liberty to act in a manner he thinks fit, for the fulfilment of his special responsibilities, even though this may be contrary to the advice of his ministers.

#### SPECIAL RESPONSIBILITIES OF GOVERNOR-GENERAL

The matters in which the Governor-General has a special responsibility are: (1) the prevention of any grave menace to the peace and tranquillity of India or any part thereof, (2) the safeguarding of the financial stability and credit of the Federal Government, (3) the safeguarding of the legitimate interests of minorities, (4) the securing to the members of the public services of any rights provided for them by the Act, and the safeguarding of their legitimate interests, (5) the prevention of commercial discrimination, (6) the prevention of actions which would subject goods of the United Kingdom or of Burmese origin imported into India to discriminatory or penal treatment, (7) the protection of the rights of any Indian State and the rights and dignity of the ruler thereof, and (8) any matter which affects the administration of any department under the discretion, judgment and control of the Governor-General.

The Governor-General is charged with special responsibility in these matters because it is apprehended that the legislature may attempt to deal with them in a manner which may be detrimental to India.

FINANCIAL ADVISER  
TO GOVERNOR-GENERAL

To maintain the financial stability and credit of India in England and abroad the Governor-General is bound to

secure that no budgetary or borrowing policy is adopted which would prejudice India's credit in the world's money markets, or affect the capacity of the Federation duly to perform its financial obligations. To assist him in his duty and to provide an officer capable of giving financial advice, he is authorised to appoint a financial adviser, the conditions of whose service and whose staff he shall determine. But before any appointment, except the first, is made ministers shall be consulted as to the person to be chosen. He is technically the Governor-General's adviser, but his advice is available to ministers.

To ensure that none of his special responsibilities is overlooked he may, after consultation with ministers, make in his discretion rules as to the information to be given to him and requiring not only ministers but secretaries to bring to his notice any matter likely to involve his special responsibility. The Instrument of Instructions<sup>1</sup> contemplates as far as possible collective responsibility of the ministers. The Governor-General is to select the Council of Ministers in consultation with the person most likely to secure a stable majority in the legislature. Though he is to include representatives of the States and minorities in the Ministry he is to remember the need of collective confidence in the legislature and of the fostering of the sense of joint responsibility. Generally the advice of ministers is to be followed unless, in the Governor-

<sup>1</sup> An Instrument of Instructions is a document given by His Majesty to the Governor-General or Governor at the time of his appointment. It contains instructions and directions as to how he should act in matters for which he has special responsibility and in other matters which are in his discretion or individual judgment. It supplements the Act. It is issued with the approval of Parliament. Any amendment of it has also to be approved by Parliament.

General's opinion, a special responsibility or some function in which his individual judgment is prescribed compels him to act otherwise. If the advice tendered by ministers is not accepted in matters for which the Governor-General has special responsibility, ministers may not resign, because when they accept office they know that in these matters their advice may not be accepted. The tenure of the lower house determines the tenure of the Ministry.

THE "RESERVED FUNCTIONS" OF THE GOVERNOR-GENERAL.  
HIS COUNSELLORS

Thirdly, the Governor-General himself directs and controls the administration of the departments of Defence, External Affairs and Ecclesiastical Affairs, and the administration of the tribal areas. In these fields he has wide powers and may act in his discretion. These matters are outside the ministerial sphere and the Governor-General's responsibility with respect to them is to the Secretary of State and thus ultimately to the British Parliament. As he cannot undertake in person so great an administrative burden he is assisted by three counsellors appointed by himself and whose salaries and conditions of service are determined by the King in Council. Each counsellor is ex-officio member of both chambers of legislature to represent his department for all purposes, though without a right to vote but with full freedom to take part in any debate in the legislature. In the administration of the Department of Defence consultation of the ministers by the Governor-General is recommended. The views of ministers in matters affecting the appointment of Indian officers to Indian forces and the employment of Indian forces outside India are to be obtained before decision. The Minister

of Finance is to be consulted before defence estimates are settled and laid before the legislature. Control of defence inevitably involves control in matters ancillary thereto of other departments under ministers and in the Provinces. To achieve this, the Governor-General may require the ministers charged with communications and the Railway Board to afford facilities for the movements of troops, and may order the Governors of the Provinces to give necessary directions in regard to the control of the land, buildings and other requirements of the forces and the safeguarding of their health and the guarding of roads, bridges and canals. In these matters the Governor-General is subject to the Secretary of State, whose orders he must obey. When responsibility does not rest with the Indian legislature, it rests with the British Parliament acting through the Secretary of State.

ADVOCATE-GENERAL  
FOR FEDERATION

In the discharge of his duties the Governor-General appoints an Advocate-General for the Federation to perform such functions of advising the Federal Government and other legal duties as may be assigned to him. He has audience in all British-Indian Courts and in Federal issues in federated State courts. The Governor-General decides his remuneration. As regards his appointment and dismissal the Governor-General acts in his individual judgment.

The Governor-General makes rules of business after consulting ministers and he is instructed to provide that the Finance minister shall be consulted on proposals affecting finance and on the reappropriation of sums within grants.

The executive action of the Federation is taken in

the name of the Governor-General. The Governor-General has his own secretarial staff appointed by him in his discretion. The salaries and the allowances of the staff are fixed by him and they are charged on the revenues of the Federation.

NATURE OF THE  
FEDERAL EXECUTIVE

It is clear from this description that the federal executive is dyarchial. The Governor-General himself, with the aid of his counsellors, controls the departments of Defence, External and Ecclesiastical Affairs, and the administration of tribal areas. Over these matters neither ministers nor the legislature have any effective control. The other departments are transferred to the ministers who are responsible to the legislature. But even within these departments there are specified matters for which the Governor-General has special responsibility. In due discharge of his special responsibility in these matters he may, if he thinks fit, disregard the advice given to him by his ministers.

It is noteworthy that dyarchy, which was found unworkable in the Provinces and rejected by the Simon Commission, is introduced at the centre under a different name. It is true that ministers have the constitutional right to tender advice to the Governor-General on the administration of all departments except those reserved to him. But the ministers' salaries, once fixed, are not to be varied and are not subject to the vote of the legislature; thus the most effective weapon to make ministers responsible to the legislature is made ineffective. Again, the exclusion from the Ministry's control of the expenditure on defence vitally limits the scope of ministerial activity. Moreover, as ministers are to be chosen by the Governor-General having

regard to the interests of the minorities and the States, the Ministry is bound to be of a heterogeneous character which will render difficult the evolution and the functioning of a true responsible government.<sup>1</sup>

As against this criticism it is pointed out that, having regard to the political conditions of India, this federal executive is the best that can be devised to enable India to evolve responsible government at the centre.

<sup>1</sup> The principles of a responsible or a Parliamentary government are:—

(1) The King (or his representative; the Governor-General or Governor) is bound in political matters to follow the advice of his ministers.

(2) The ministers should be members of one or other House of Parliament or legislature.

(3) The ministers or the Ministry must command the support of the lower house.

(4) The political responsibility of the ministers is collective.

(5) The salaries of the ministers are subject to the vote of the legislature.

## CHAPTER VI

### THE CENTRAL OR FEDERAL LEGISLATURE

Till 1909, the central legislature was in substance a mere legislative committee of the Government.

“Frankly abandoning the old conception of the councils as a mere legislative committee of the Government, they (Morley-Minto Reforms) did much to make them serve the purpose of an inquest into the doings of Government.”

M. C. REPORT.

The Indian legislature has now the full powers of a law-making body, but it is a non-sovereign law-making body.

#### I. Historical

##### GERM OF LEGISLATIVE POWER

The germ of the legislative power of the East India Company lay embedded in Elizabeth's Charter, which authorised the East India Company to make reasonable laws, orders and ordinances not repugnant to English law for the good government of the Company and its affairs. The Charter Act of 1726 invested the Governors and councils of the three Presidencies with power to make and ordain bye-laws and rules for the good government of the Company's factories. From 1726 onwards the three Presidency Councils proceeded to make laws independently of one another within their jurisdictions. The Regulating Act of 1773 subordinated the Presidencies and councils of Madras and Bombay to the Governor-General and Council of Bengal, who were thereby constituted the supreme government, and required the Madras and Bombay governments to send to Bengal

copies of all their Acts and orders. Thus up to 1833 such legislative powers as were exercisable in India were vested in the executive governments. This was the period of Bengal, Madras and Bombay "regulations."

CHARTER  
ACT, 1833

The germ from which the special legislative council may be said to trace its descent is to be found in the Charter Act of 1833, which aimed deliberately at simplifying the legislative machinery. Under that Act Macaulay was appointed to be the first legislative councillor of the Governor-General's Council. All legislative power in India was vested in the Governor-General in Council. The council was increased by the addition of a fourth ordinary member who had no power to sit or vote except at meetings for the purpose of making laws and regulations. The laws made by this body were, subject to their not being disallowed by the Court of Directors, to have effect as Acts of Parliament. Henceforward the laws passed by the Indian legislature were known as Acts. Further changes were made by the Charter Act of 1853. The

CHARTER ACT,  
1853

council was doubled in size for legislative purposes, by the addition of six members—the Chief Justice of Bengal, another judge and four Company's servants of twenty years' standing appointed by the governments of Bengal, Madras, Bombay and the North-West Province. The legislative council thus constituted was intended for purely legislative work.

THE INDIAN COUNCILS  
ACT, 1861

The Indian Councils Act of 1861 remodelled the legislative council. It provided that the Governor-General in addition to the members above mentioned might further nominate such persons, not less than six and not more

than twelve, as members of the council for the purpose of making laws and regulations only ; one-half of them being non-official persons. The functions of the legislative council were limited strictly to the consideration and enactment of legislative measures.

#### THE INDIAN COUNCILS ACT, 1893

The Indian Councils Act of 1893 increased the size of the legislative council. It introduced changes in the method of nomination and relaxed to some extent the restrictions on its proceedings. The number of members to be nominated for legislative purposes was fixed at ten to fifteen. An official majority was maintained. The powers of the legislative council were also enlarged by rules under which the members were allowed to take part in the annual discussion of the financial statement and to draw attention to any financial matter they pleased. They were also allowed to ask questions. The activities of the council were, however, strictly limited to legislative business and the asking of questions.

#### MORLEY-MINTO REFORMS

##### MORLEY-MINTO REFORMS, 1909

By the Morley-Minto Reforms in 1909 the Indian legislative council was enlarged. The number of additional members was fixed at sixty, of whom not more than twenty-four were to be non-officials. The Governor-General nominated three non-officials to represent certain specified communities and filled two other seats by nomination. Representation was given to interests rather than to territories. The twenty-seven elected seats were distributed among certain special constituencies such as the landowners, the Muhammadans, Muhammadan

landowners and two chambers of commerce, and the residue of open seats was filled by election by non-official members of the nine provincial legislative councils. Thus the principle of election in an indirect manner was introduced. Communal representation was definitely recognised for the first time. Lord Morley maintained that the Governor-General's Council in its legislative as well as its executive character should continue to be so constituted as to ensure its constant and uninterrupted power to fulfil the constitutional obligation that it owes to His Majesty's Government and to the Imperial Parliament.

Changes were also introduced in the functions of the council. For thirty years between 1862 and 1892 the council had no other functions than that of legislation. The Act of 1893 gave members power to discuss the Budget but not to move resolutions about it or to divide the council. Lord Morley's Act empowered the council to discuss the Budget at length before it was finally settled, to propose resolutions on it and to divide the house upon them. Not only on the Budget, but on all matters of general public importance resolutions might be proposed and divisions taken. The resolutions were, however, only recommendations to the executive government. On certain matters such as those affecting Native States no resolutions could be moved. Any resolution might be disallowed by the Governor-General if it was inconsistent with public interests. Members were also allowed to ask supplementary questions.

The Morley-Minto Reforms frankly abandoned the old conception of the council as a mere legislative committee of the Government. They did much to make it serve the purpose of an inquest into the doings of Government by conceding the very important rights of

discussing administrative matters and of cross-examining Government on its replies to questions. Lord Morley publicly disclaimed that the reforms were either directly or indirectly intended to establish the Parliamentary system in India. The Morley-Minto Reforms failed owing to various reasons. Some of the antecedent conditions of success were absent. The defect of the electoral system prevented a healthy growth of parties. The official *bloc* often rendered the opinion of the non-officials ineffective. There were inherent defects in the reforms which did not satisfy the political aspirations of the people. In the words of the Montagu-Chelmsford Report: "The Morley-Minto Reforms, in our view, are the final outcome of the old conception which made the Government of India a benevolent despotism (tempered by a remote and occasionally vigilant democracy) which might as it saw fit for purposes of enlightenment consult the wishes of its subjects. . . . Parliamentary usages have been initiated and adopted in the councils up to the point where they cause the maximum of friction, but short of that at which by having real sanction behind them they begin to do good. . . . Responsibility is the savour of popular government, and that savour the present councils wholly lack. We are agreed that our first object must be to invest them with it. They must have real work to do ; and they must have real people to call them to account for their doing it."

## II. The Pre-Federation or Central Legislature (under the Act of 1919)

The Act of 1919 introduced a bicameral system of legislature. As the legislature was enlarged both in its

composition and functions it was apprehended that it might use its powers rashly and hastily ; hence a second chamber was established.

The central legislature consists of the Governor-General and two chambers, viz., the Council of State and the Legislative Assembly. In each of these chambers the majority of members are elected.

#### THE COUNCIL OF STATE

**COMPOSITION** The Council of State consists of sixty members, of whom thirty-four are elected and twenty-six nominated. Of the nominated not more than twenty are officials.

The electorate of the Council of State is so framed as to give it a character distinct from that of the Legislative Assembly. Its franchise is extremely restricted. Voters have to possess high property qualifications. Previous experience in a central or provincial legislature, service in the chair of a municipal council, membership of the University Senate and similar tests of personal standing qualify persons for a vote at its election. Electors are grouped into communal constituencies. Women are not entitled to vote at its election or to offer themselves for election. This disability may be removed by a resolution. Its president is appointed by the Governor-General from amongst its members. It continues for five years, unless previously dissolved.

#### THE LEGISLATIVE ASSEMBLY

**COMPOSITION** The Legislative Assembly consists of 145 members, 105 of whom are elected while twenty-six are official members and fourteen are nominated non-officials. Amongst the nominated non-officials

are included the sole representative of the depressed classes, the sole representative of the Indian Christians and the sole representative of the Anglo-Indian community. The twenty-six officials include most of the members of the Governor-General's Council, other important members of the Government of India's secretariat or the representatives of the different provincial governments. For the first four years of its existence the president was appointed by the Governor-General, but thereafter he has been elected by its members from amongst them and approved by the Governor-General.

The elected members are distributed amongst the Provinces, having regard to their importance. The franchise is on the same lines as for the provincial councils but with somewhat higher electoral qualifications. Muslims have secured separate representation by the formation of Muhammadan constituencies. Apart from the general constituencies, Muhammadan and Non-Muhammadan, and the European seats, there are certain special constituencies for landowners and for Indian commerce.

#### PRIVILEGES OF THE MEMBERS

Subject to the rules and standing orders, freedom of speech is assured to the members in both chambers. No person is liable to any proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber.

#### LEGISLATIVE POWERS

The Indian legislature has power to make laws for the whole of British India. No bill becomes law

unless it is passed by both the Houses and receives the assent of the Governor-General. A bill may, except in case of a finance bill, originate in either chamber. The general legislative powers are subject to certain qualifications. Previous sanction of the Governor-General is required for the introduction of any measure affecting the public debt or public revenues of India, or imposing any charge on the revenues of India; the religion or religious rites and usages of any class of British subject; the discipline or maintenance of the military, naval or air forces, the relations of the Government with foreign Powers or States; or any measure regulating any provincial subject, which is subject to legislation by the Indian legislature; and repealing or amending any act or ordinance. In certain specified matters the Indian legislature has no power to make laws.

QUESTIONS,  
RESOLUTIONS,  
MOTIONS FOR  
ADJOURNMENT

The members of the legislature have the right of asking questions and also supplementary questions on matters of public importance. They can also move resolutions on all matters which are within the sphere of the legislature, subject to their being disallowed by the Governor-General. They can also move motions for adjournment whenever they want to discuss a definite matter of urgent public importance, or to draw the attention of the Government to any event of recent occurrence, or to express their feelings on an issue which may have recently arisen. For the exercise of this right special procedure is laid down.<sup>1</sup>

<sup>1</sup>A motion for adjournment of the business of either chamber for the purpose of discussing a definite matter of urgent public importance is made with the consent of the President. The dis-

## FINANCIAL POWERS

The annual statement of the estimated revenue and expenditure of the Government of India is presented simultaneously in both chambers, and in both a discussion of the main principles is permitted.

The expenditure of the Government of India is divided into votable and non-votable items. The non-votable items are not to be voted by the legislature. They comprise interest and sinking fund charges on loans, expenditure prescribed by law, salaries and pensions of the officials appointed by the Secretary of State in Council, Chief Commissioners and Judicial Commissioners, members of the superior services, and expenditure classified as ecclesiastical, political and defence. Thus the whole of this expenditure which absorbs nearly 75 per cent of the total expenditure is excluded from the vote of the Legislative Assembly. It has become usual for the Governor-General to give directions which enable Army expenditure as a whole to be discussed by the Legislative Assembly, though no vote on it can be taken.

As regards the votable expenditure, the demands for grants are submitted to the Legislative Assembly alone. The Council of State has no power to vote the demands for grants.

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cussion takes place at 4 p.m. and generally lasts for two hours. In some cases, if it is passed it amounts to a censure on the Government. The right to move the adjournment is subject to some restrictions (1) not more than one such motion shall be made at the same sitting (2) not more than one matter can be discussed on the same motion, and it must be restricted to a specific matter of recent occurrence (3) it must not revive discussion on a matter already discussed (4) it must not deal with a matter on which a resolution could not be moved.

The Government alone can propose an item of expenditure or its increase and an addition to or an increase in taxation. The Finance Bill, which deals with taxation, comes before both Houses, which have equal power in dealing with it. Only the Assembly, however, as already stated, can grant or withhold supply. If the Legislative Assembly declines to vote a demand put before it, the Governor-General in Council is empowered to declare that he is satisfied that the demand which has been refused is essential to the discharge of his responsibilities. In that case he is empowered to restore a rejected demand for grant in the exercise of this power of "restoration."

To ensure general supervision over the finances of the Government of India a committee of the members of the Legislative Assembly, called the Standing Finance Committee, is appointed every year. The Finance member is its chairman with a casting vote. It examines all the estimates of the proposed new votable expenditure and offers criticism, suggests retrenchment and economy and finally settles the items of expenditure.

Another committee, called the Committee on Public Accounts, is also appointed at the commencement of each financial year to deal with audit and appropriation of accounts of the Governor-General in Council. It consists of not more than twelve members, of whom not less than two-thirds are elected members of the Assembly. The Finance member is the chairman and he has a casting vote. It examines the expenditure actually incurred by the Government during the closing year and has to scrutinise and satisfy itself that the expendi-

ture granted by the legislature was spent for the purpose and on the heads for which it was granted. It brings to the notice of the legislature all the irregularities in the procedure of expenditure. Its work is in the nature of a post-mortem examination of the expenditure.

**AUDITOR-GENERAL** An Auditor-General is appointed by the Secretary of State in Council and holds office during His Majesty's pleasure. He is an independent person. His salary and tenure are fixed by the Secretary of State in Council. He audits the expenditure of the Government of India and submits his report every year.

**POWER OF CERTIFICATION** In the case of failure of either chamber of the legislature to pass a bill whose passage is essential, the Governor-General may secure its enactment by certifying that the bill is essential for the safety, tranquillity or interest of British India. He can do this in the exercise of his powers of certification. When he certifies it the Act has to be laid before both Houses of Parliament and has no effect until it has subsequently received His Majesty's assent. But where in the opinion of the Governor-General a state of emergency exists which justifies such action the Governor-General may direct that the Act which he has certified shall come into operation forthwith. It may be disallowed by His Majesty in Council.

**POWER OF ISSUING ORDINANCES** In case of emergency the Governor-General may, without consulting the legislature, issue ordinances which have the force of law for six months.

### RELATION BETWEEN THE TWO HOUSES

Three methods are provided for avoiding or composing differences between the two chambers. They are joint committees, joint conferences and joint sitting. The first method requires a formal resolution in each chamber, and each nominates an equal number of members. The second means is to be used when a difference of opinion has arisen. A joint conference, consisting of an equal number of members of each chamber, is held but no decision is taken. Its result is to be looked for in the subsequent proceedings of the chambers. Thirdly, where the originating and the revising chamber have failed to reach agreement within six months of the passing of the bill, the Governor-General in his discretion may convene a joint sitting of both chambers at which those present deliberate and vote upon a bill in the shape given to it by the originating house. The decision taken is deemed to be the decision of both chambers.

### III. The Federal Legislature

The Federal Legislature consists of the King, represented by the Governor-General, and two chambers styled the Council of State and the House of Assembly or Federal Assembly.

The Council of State is a permanent body. Its members are elected for nine years, one-third of them retiring every third year. The Assembly, unless dissolved sooner, has a maximum duration of five years. Both chambers must meet annually. The Governor-General may in his discretion summon and address either chamber or both, prorogue the chambers and

send messages on pending bills or on other matters. Each chamber elects its own President or Speaker and Deputy-Speaker who may be removed only by a vote of the majority of all the members passed on fourteen days' notice. The Speaker holds office on a dissolution until immediately before the meeting of the new Assembly. The presiding officer or the Speaker has a casting vote only. It is the duty of the presiding officer or the Speaker to adjourn or suspend a sitting if less than one-sixth of the members are present. The salaries of the President and the Speaker are fixed by the Governor-General till they are fixed by the legislature. Ministers, counsellors of the Governor-General, and the Advocate-General may speak in either chamber but may only vote if elected or nominated a member.

COMPOSITION  
OF THE COUNCIL  
OF STATE

The Council of State consists of 260 members, of whom 156 are members for British India and up to 104 are appointed by the rulers of the States. The exact number in the case of the States depends upon the number of the States acceding to the Federation.

The members for British India are to be directly elected, with the exception of six to be nominated by the Governor-General so as to secure representation of the scheduled castes, women and minority communities. There are seventy-five general seats; six for scheduled castes, four for Sikhs, forty-nine for Muhammadans, six for women. There are seven seats for Europeans, two for Indian Christians and one for Anglo-Indians. These seats are to be filled indirectly by the members of electoral colleges composed of the members of those communities in the chamber or

chambers of the provincial legislatures. The territorial seats are distributed amongst the Governors' Provinces as follows: twenty for Madras, Bengal and the United Provinces; sixteen for Bombay, the Punjab and Bihar; eight for the Central Provinces, and five for each of the small Provinces and one each for Delhi and Ajmer-Merwara, Coorg and British Baluchistan.

The States' seats are allocated amongst States with regard to their dynastic status, salutes and other factors. Hyderabad is given five seats, Mysore, Kashmir, Gwalior and Baroda each three. The smaller States are given fewer seats. Some States are grouped and their rulers would jointly or in rotation send the representative for the group. The State representatives are appointed by the rulers of the States, who may recall them before the expiry of the period.

Thus the representation in the Council of State or the Upper Chamber, which in other federations secures the equality of the federating units, is strictly confined to the vested interests recognised on a communal basis and to the nominees of the rulers.

#### COMPOSITION OF THE HOUSE OF ASSEMBLY OR FEDERAL ASSEMBLY

The House of Assembly consists of 375 members, of whom 250 are representatives of British India and not more than 125 are appointed by the rulers of the States which have acceded to the Federation. The 250 seats of British India are distributed as follows: General seats 105, of which nineteen are for the scheduled castes, six for Sikhs, eighty-two for Muhammadans, four for Anglo-Indians, eight for Europeans, eight for Indian Christians, eleven for the representatives of commerce and industry, seven for landholders, ten

for the representatives of labour and nine for women.

Territorially they are distributed as follows: Madras, Bengal and the United Provinces thirty-seven each, Bombay, the Punjab and Bihar thirty each, the Central Provinces and Berar fifteen, Assam ten, the North-West Frontier Province, Orissa and Sind five each, British Baluchistan one, Delhi two, Ajmer-Merwara one, Coorg one and non-provincial four. The election of the British India members is indirect. The Hindu, Sikh and Muhammadan members of the Provincial Assemblies are to elect members of these communities. In the case of the Hindu or general seats a certain number are allotted to the scheduled castes. These castes hold primary elections at which they choose four candidates for each seat reserved for them, and the candidate who then comes first in the voting by the general electorate wins the seat. The system of proportional representation with the single transferable vote is adopted in the voting. The European, the Anglo-Indian and the Indian Christian members in the Provincial Assemblies constitute electoral colleges for electing members assigned to their communities. The seats reserved for women are to be filled by women members of the Provincial Assemblies. Seats for commerce and industry are to be filled by chambers of commerce and like bodies; for landholders by landholders, for labour by labour organisations. There are four non-provincial seats filled by the Federated Chamber of Commerce, the Associated Chamber of Commerce, commercial bodies in Northern India and labour organisations respectively.

The States' seats are distributed amongst the States in relation to, among other things, their population.

Hyderabad, with a population of 14,436,148, has sixteen seats; Mysore, with 6,557,302, has seven seats, and the other States have fewer seats according to their population.

In all federations the lower chamber generally represents the citizens of the Federation as a whole. It is a cohering or uniting chamber and embodies the national unity of the Federation as a State. The election for this chamber is generally direct with a view to bringing the ordinary citizens of the Federation in direct contact with the Federal Government. India has departed from this principle by adopting the principle of indirect election.

#### MEMBERS AND THEIR QUALIFICATIONS

A member of the legislature must be a British subject or a subject of a Federated State. For the Council of State he must be thirty and for the Federal Assembly twenty-five years of age, but this restriction is waived in the case of an acting ruler. Every member has to take an oath or affirmation before he takes his seat. A member may resign. Either chamber may declare vacant the seat of any member absent without permission for sixty days. A seat is vacated if the member incurs disqualification for any of the following reasons:—holding of office under the Crown not being ministerial office or membership of a service of the Crown, unsoundness of mind declared by a competent court, undischarged bankruptcy, offences in connection with elections declared to disqualify, conviction in British India or a Federated State of an offence punished by transportation or imprisonment of not less than two years, unless five years have elapsed since release, and failure in certain

cases to return electoral expenses. A person serving a sentence of transportation, or of imprisonment for a criminal offence, cannot be chosen. If a disqualified person sits and votes he has to pay a penalty of Rs. 500 a day which can be recovered as a debt due to the Federation.

#### PRIVILEGES OF MEMBERS

The members of the legislature enjoy certain privileges. To enable them to express their views freely and fearlessly, freedom of speech is assured subject to the rules of procedure and standing orders. Freedom of speech does not include the right to publish a speech which is libellous apart from its publication under the authority of the legislature. No member is liable to any proceedings in respect of voting or papers published by the order of either chamber. Other privileges enjoyed by the former legislature continue. Either chamber has complete control over its proceedings but neither of them is a court or has punitive power other than that of removing persons infringing the rules or standing orders or otherwise behaving in a disorderly manner. The Governor-General in his individual judgment makes rules to safeguard confidential matters from disclosure. Members are to receive such salaries as the legislature may determine; till then they are to be paid at the same rate as in the former legislature.

#### LANGUAGE

All proceedings in the federal legislature shall be in the English language, but the rules of procedure permit persons insufficiently or wholly unacquainted with English to use another language.

### PROCEDURE

Each chamber makes its own rules of procedure, but for certain matters the Governor-General himself, after consulting the Speaker, makes rules. He makes rules regulating the procedure in matters affecting functions to be discharged at his discretion or in his individual judgment, securing timely completion of financial business, forbidding the discussion of any matter connected with a State outside the federal sphere, prohibiting discussions on questions in respect of (1) the relations of the Crown, the Governor-General and any foreign prince or State, (2) matters connected with tribal areas or excluded areas, (3) his actions in his discretion in relation to provincial affairs, (4) the personal conduct of the ruler of a State or a member of his family. He also makes rules for the joint sitting of the chambers. Further, if he considers that the discussion of any bill or its clauses or amendments would affect the discharge of his responsibility for the prevention of any grave menace to the peace or tranquillity of India, he may prevent discussion and further proceedings thereon. No discussion is permitted of the conduct of a judge of the Federal Court or any High Court including State courts.

### LEGISLATIVE PROCEDURE

A bill normally requires the assent of both chambers to become law. It may, except in the case of a finance bill, originate in either chamber. A dissolution of the Assembly causes the lapse of any bill passed by it, if pending in the Council of State; but does not affect a bill of the Council of State. If a bill is passed by one chamber and rejected by the other, or

the chambers disagree as to the amendments, or it is not presented for assent within six months, exclusive of any period of prorogation or adjournment, after its reception by the other chamber, the Governor-General may notify his intention to call a joint sitting. He will do so on ministerial advice. But in his discretion he may summon a joint sitting if the measure relates to finance or affects his duty of discretion or exercise of individual judgment without waiting for rejection or disagreement or for the six-month period. Generally the joint sitting takes place in the next session of the legislature, but when he acts in his discretion it may take place in the same session. The President of the Council of State presides at the joint sitting. The holding of a joint session is not affected by the dissolution of the Assembly. At the joint session questions are determined by a majority of the members voting.

When a bill has been passed, it must be immediately presented for assent or reservation in his discretion to the Governor-General. The Governor-General may assent to it or return it for consideration in whole or in part, and may suggest amendment, and the chamber must take his suggestion into consideration without delay. Unless the Governor-General notifies the royal assent to it within twelve months, a reserved bill automatically drops or lapses. A bill may be disallowed within twelve months from assent; thereupon the Governor-General must forthwith notify disallowance and the Act becomes void from the date of such a notification. The members of the chambers have the right of asking questions and also supplementary questions on public matters and also on matters falling within the sphere of the legislature.

They have also the right to move resolutions on similar matters. These rights are exercised with a view to acquainting the executive with the opinion and feelings of the members on the policy and actions of the Government. The members have also the right of moving motions for adjournment whenever they want to draw the attention of the executive to an event of recent occurrence or to any matter of urgent public interest which has recently arisen. There is a regular procedure laid down for the exercise of this right.

### FINANCIAL PROCEDURE

As regards financial matters, the Governor-General is required to lay before the legislature the annual financial statement of the estimated receipts and expenditure, showing separately the sums charged on the revenues of the Federation and also the sums required to meet other expenditure proposed to be met from the federal revenues. Expenditure on revenue account is to be distinguished from other expenditure. Similarly expenditure necessary for the discharge of the special responsibilities of the Governor-General should be indicated.

**NON-VOTABLE ITEMS**      The items of federal expenditure are of two kinds:—(1) Non-votable, (2) Votable. The Non-votable items are the items of expenditure which are charged on the revenues of the Federation. They are:—(1) the salary and allowances of the Governor-General, (2) debt charges including interest, sinking fund, etc., (3) salaries and allowances of ministers, counsellors, Chief Commissioners, the financial adviser and his staff, and the Advocate-General, (4) salaries, allowances and pensions of the

judges of the Federal Court and pensions of the High Court judges, (5) expenditure on defence and external affairs, tribal areas and other territories, and up to Rs. 40,00,000 on ecclesiastical affairs, (6) sums payable in respect of the functions of the Crown in respect of the States, (7) grants for excluded provincial areas, (8) sums required to meet any judgment decree or award, (9) any other expenditure charged by the Act on Indian revenues. The Governor-General in his discretion determines the classification of any item. It is open to either chamber to discuss but not to vote on these excluded items except the items in respect of the Governor-General and the States.

**VOTABLE ITEMS** All other items of expenditure are votable and must be submitted in the form of demands for grants recommended by the Governor-General. The Government alone has the right to propose expenditure or an increase in expenditure or taxation. Either chamber may refuse or reduce a proposed grant, the Assembly being first consulted. If it refuses or diminishes a grant, the Governor-General may direct that the full grant or some other less amount may be submitted to the Council of State, otherwise the demand is dropped or the diminished sum asked for from the Council of State. In the case of disagreement on grants a joint sitting decides the question.

The Governor-General authenticates a schedule specifying the grants made by the chambers, to which he may add sums demanded by the Government but which the chambers have refused or reduced and which he considers necessary in respect of his special responsibility, and the sums charged on the revenues of the Federation under the Act. This authenticated

schedule must be placed before the chambers but may not be discussed by them. It constitutes the sole authority for expenditure for the year. The Governor-General submits a supplementary statement for additional expenditure when necessary. Thus the legislature has control over a limited expenditure. The expenditure which falls under the reserved heads or affects his special responsibility, and which absorbs nearly 75 per cent of the total expenditure, is not under the control of the legislature. The legislature has control over the remaining 25 per cent of the expenditure.

The legislature has no initiative in case of a bill or amendment imposing or increasing taxation, regulating the borrowing of money or giving a guarantee affecting financial obligations of the Federation, and charging expenditure on federal revenues. The Governor-General has the sole initiative in recommending such a bill. Such a bill cannot be introduced in the Council of State. No bill, if it involves expenditure, may be passed by the legislature without the Governor-General's recommendation.

**POWERS OF THE  
GOVERNOR-GENERAL  
TO PROMULGATE  
ORDINANCES**

The Governor-General is given emergency powers as regards legislation. He may, when the legislature is not in session, on the advice of his ministers that circumstances have arisen which require immediate action, issue an ordinance. The Governor-General must exercise his judgment in doing so if the measure is one which could have been introduced into the legislature with his previous sanction. He may not promulgate without the King's instructions any ordinance which, if it had been a bill, he

would have been bound to reserve for the assent of His Majesty. The ordinance must be laid before the legislature when it meets. It lasts only for six weeks unless disapproved earlier by resolutions of chambers. It may be disallowed by the Crown. It may be withdrawn at any time by the Governor-General.

The Governor-General may, under similar circumstances, in matters involving his discretion or individual judgment, issue an ordinance having a duration of six months but capable of being extended for a further period of six months. Such an ordinance may be disallowed by the Crown or may be withdrawn by him. If it is an extended ordinance it must be laid before both Houses of Parliament.

#### GOVERNOR-GENERAL'S ACTS

Further, the Governor-General may enact permanent legislation on such matters, explaining his actions to the chambers by message. He may send to the chambers a draft of his proposed Act, which may be enacted into an Act after a month's delay and after taking into consideration any resolution passed by the chambers. Such an Act must be laid before both Houses of Parliament, which may disallow it.

#### GOVERNOR-GENERAL'S POWERS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY

The Governor-General is given special powers in case of failure of constitutional machinery. If he is satisfied that the Government of the Federation cannot be carried on under the Act, he may issue a proclamation declaring that the functions specified in the proclamation shall be carried on at his discretion and assuming any powers exercisable by federal authority

other than the powers of the Federal Court. For this purpose he may modify the Government of India Act. Any such proclamation may be modified or revoked by a subsequent proclamation. It must be laid before both Houses of Parliament. It ceases to operate after six months unless both Houses of Parliament approve its continuance. If it is continued it remains in force for a further period of twelve months. As the government of the country cannot be carried on under proclamation for more than three years, the Act must be amended at the latest at the end of three years, to meet the new circumstances created by the continuance of the failure of the constitutional machinery. Any law made by the Governor-General while the proclamation is in force shall last for two years after the expiry of the proclamation, unless sooner repealed or re-enacted by the Indian Legislature.

## CHAPTER VII

### THE PROVINCES: THE PROVINCIAL EXECUTIVE

“Looking ahead to the future we can picture India to ourselves only as presenting the external semblance of some form of federation. The Provinces will ultimately become self-governing units, held together by the Central Government, which will deal solely with matters of common concern to all of them.”

M. C. REPORT.

“From April 1, 1937, these great political entities (the eleven Autonomous Provinces) will move forward into the future, the objects of intense local patriotism, proud of their history, confident in their future, determined, each one of them, to play a worthy part in that new India which is now taking shape before our own eyes.”

THE MARQUESS OF LINLITHGOW.

#### I. Provinces of British India

#### HOW HAVE THE PROVINCES BECOME AUTONOMOUS FEDERATING UNITS?

Under the New Constitution the Provinces are constituted the federating units along with the States. Till 1919 India had, strictly speaking, a unitary form of government. The Provinces were mere agents of the Central Government. Some powers were delegated to Provinces for administrative convenience. The Act of 1919 introduced important changes and gave them some independent powers subject to the general control of the Central Government. The Government of India Act, 1935, makes the Provinces autonomous with a view to constituting them the federating units.

A federation means a union of independent units. In British India these units did not exist, hence they are created.

The cardinal point which emerges from the examination of the constitutional structure of India before 1919 is the concentration of authority at the centre. This centralisation may be traced back to the Charter Act of 1833. Up to that date the control exercised by the Governor-General in Council of Bengal over the two Presidencies of Madras and Bombay was limited to transactions with Indian potentates and questions affecting war and peace. For the ordinary internal administration of these areas and for the making of laws to be applied to them the Government of Bengal had, previous to 1833, no responsibility. By the Act of 1833 the Governor-General of Bengal became the Governor-General of India and his government was called for the first time the Government of India. Its authority became coextensive with the area of British possessions in India. The independent legislative powers formerly exercised by the Governments of Madras and Bombay were taken away. Down to 1921 the Governor-General in Council was, inside British India, the supreme authority in which was concentrated responsibility for every act of civil as well as of military government throughout the whole area. Provincial Governments had, of course, most important work to do, for in their hands lay the day-to-day task of administration in the provinces. But the Provincial Governments were virtually in the position of agents of the Government of India. The entire governmental system was in theory one and indivisible. The rigour of logical application of that conception to administrative practice had gradu-

ally been mitigated by the wide delegation of powers and by customary abstention from interference with the agents of administration. Nothing illustrated more clearly the overriding unity of the centre, and the subordination of Provinces to it, than the arrangement between them as to finance. In short, up to 1919, from the administrative, the financial and the legislative point of view, the concentration of authority at the centre was a cardinal feature of the constitution of India. This was one of the features which Parliament in 1919 set itself to modify, as it blocked effectively any substantial advance towards the development of self-governing institutions. The authors of the Montagu-Chelmsford Report stated: "Provinces are the domains in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once and our aim is to give complete responsibility as soon as conditions permit." This object was executed by the introduction of dyarchy, by which partial responsibility was introduced in the Provinces. The intention of the authors of the Reforms of 1919 was to give an independent life to provincial organisms which would in future form the members of a British-India Federation. The Government of India Act of 1935 has created an All-India Federation and has made the Provinces autonomous units, independent within their own sphere of any central control. This is done by the introduction of full provincial autonomy, whereby each of the Governors' Provinces possesses an executive and a legislature having exclusive authority within the Provinces in a precise defined sphere and in that

WHAT IS PROVINCIAL  
AUTONOMY?

exclusively provincial sphere broadly free from control by the Central Government and legislature. This represents a fundamental departure from the scheme under the Act of 1919. Under that Act the Provincial Governments exercised devolved authority from the Government of India and not an independent authority. Under the Act of 1935 the Provinces are to exercise independent authority derived from the Crown directly.

**PROVINCES OF BRITISH INDIA** Under the Act of 1935 British India consists of (1) eleven Governors' Provinces viz., Bengal, Madras, Bombay, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province and the two newly created provinces of Orissa and Sind;<sup>1</sup> (2) six Commissioners' Provinces, viz., British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Islands of Andaman and Nicobar, and the area known as Panth-Piploda. The Government of India has also jurisdiction over certain tribal areas.

## II. Responsible Government in the Provinces

"Responsible Government is not an automatic device which can be manufactured to specification."

J. S. C. REPORT.

"In India the executive function is of over-riding importance."

J. S. C. REPORT.

### PROVINCIAL EXECUTIVE

**HISTORICAL** Before 1919, of the fifteen administrative units of British India, the three Presidencies of Bengal, Bombay and Madras, were each administered by a Governor with a council of three members who were mostly members of the Indian

<sup>1</sup> Orissa and Sind have been constituted separate provinces from April 1, 1936. Till April 1, 1937, each of them is to be governed by a Governor aided by a nominated Advisory Council.

Civil Service. In emergency the Governor over-ruled his colleagues, but otherwise the decisions were those of the majority. These Governorships were held by men whose experience had been in the field of British politics. In four Provinces there were Lieutenant-Governorships which were held by senior members of the Indian Civil Service. They governed these provinces either with or without the help of a council. There were three Provinces which were governed by civilians called Commissioners as merely agents of the Government of India. The remaining units were under the direct control of the Government of India.

The Government of India Act of 1919 converted six more out of the twelve units into Governors' Provinces and left the other units in the same position as before.

**DYARCHY** The executive system introduced in Governors' Provinces under the Act of 1919 was known as dyarchy. Under it the provincial subjects (the sphere of provincial government) were divided into transferred subjects and reserved subjects. The first group was administered by the Governor acting with ministers, the second by the Governor in Council. The members of the Governor's Council, who did not exceed four, and of whom at least half were Indians, were appointed by His Majesty. One, at least, of these members was a person who had been for not less than twelve years in the service of the Crown in India. The Governor presided at meetings of his Executive Council, where ordinarily the decision of the majority prevailed, though the Governor had in case of equality of votes and in certain circumstances a right to over-rule his councillors. The ministers were chosen by

the Governor from the elected members of the provincial legislative council. They were not members of the Executive Council, but for the purposes of convenience the executive members and the ministers met regularly under the presidency of the Governor for discussing matters of common interest. But the responsibility for decision rested upon the Governor in Council or the Governor advised by his ministers, as the case might be, according to the subject. There was a joint purse for both kinds of subjects, but the requirements of the reserved subjects had priority over those of the transferred subjects. The Governor was required to be guided by the advice of his ministers in relation to transferred subjects unless he saw sufficient cause to dissent, in which case he might require action to be taken otherwise than in accordance with that advice. Ministers held office at the Governor's pleasure, but the financial power of the legislature gave the latter the means of influencing the ministerial policy. The executive members, though ex-officio members of the legislature, were independent of it and in practice were appointed for a fixed term of five years. The provincial governments were under the general control and superintendence of the Central Government and in certain matters were under its direct control.

This dual or dyarchic system which was designed to develop a sense of responsibility, was not successful. Apart from giving some opportunities to some Indians for training in the system of Parliamentary government, its working for sixteen years did not result in any substantial results, and the hopes of its authors, Mr. Montagu and Lord Chelmsford, remained unrealised.

Under the Government of India Act, 1935, Provinces, as we have already seen, are transformed into auton-

omous political units, legally deriving their authority directly from the Crown. The whole basis of the provincial executive under the Act of 1935 is a fundamental departure from that under the Act of 1919. Dyarchy is abolished and full provincial autonomy is introduced.

#### THE PROVINCIAL EXECUTIVE UNDER THE ACT OF 1935

**GOVERNOR** The whole executive authority of the Province is vested in the King and is exercised by his representative, the Governor, appointed under the Sign Manual. His salary is fixed by the Act. His position in the Provinces is largely similar to that of the Governor-General in the Federation. He has no direct responsibility for the financial stability of his Province, but the Governor-General may require him to act so as to safeguard the stability of federal finance. The executive authority of the Province extends to all matters on which the provincial legislature may legislate.

**COUNCIL OF MINISTERS** In the exercise of his functions the Governor has a council of ministers to aid and advise him over the whole sphere of the Provincial Government, except in such matters which are left to his discretion. The Governor may in his discretion preside at the meetings of the council of ministers. He decides as to whether a particular matter is one in respect of which he is to act in his discretion or in his individual judgment. Ministers, who must be, or become, members of the legislature within a stated period, are appointed and dismissed by him in his discretion. A minister who ceases to be a member for a period of six consecutive months ceases

to be a minister. The Governor fixes their salaries in his discretion until fixed by the provincial legislature. The salaries cannot be varied while ministers are in office. The Instrument of Instructions directs the Governor to select his ministers in consultation with the person who, in his judgment, is likely to command the largest following in the legislature, and to appoint those persons, including so far as possible members of important minority communities, who are in the best position collectively to command the confidence of the legislature.

**SPECIAL  
RESPONSIBILITIES  
OF GOVERNOR**

The Governor has special responsibilities in respect of, (1) the prevention of any menace to the peace or tranquillity of his Province or any part thereof, (2) the safeguarding of the legitimate interests of the minorities, (3) the securing to the members of the public services of any rights under the Act and the safeguarding of their legitimate interests, (4) the securing of protection against discrimination in the sphere of executive action, (5) the securing of the peace and good government of areas declared to be partially excluded areas, (6) the protection of the rights of States and the rights and dignity of any ruler and, (7) the securing of the execution of orders (dealing with administrative relations) lawfully issued by the Governor-General in his discretion. The Governor of the Central Provinces and Berar has the further special responsibility of seeing that a due proportion of revenue is spent on Berar. The Governor of Sind has the further special responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme. The Governors of Provinces in which there are excluded

areas have to secure that no action of theirs in respect of such an area is prejudiced by their other actions. Any Governor who is discharging any functions as agent for the Governor-General has to see that no action is taken which is inconsistent with his duty as an agent. In all such cases, in which he is exercising his special powers, or acting in his discretion, the Governor must, after hearing ministers' advice, act in his individual judgment, and in so acting he is subject to the directions of and is responsible to the Governor-General acting in his discretion, and through him to the Secretary of State and ultimately to Parliament. The mode of the exercise of his functions as regards his special responsibilities is laid down in the Instrument of Instructions issued to him by the King on his appointment. To ensure that none of his special responsibilities is overlooked, the Governor makes rules requiring ministers and secretaries to transmit to him information as to the business of the Government and to bring to his notice any matter likely to involve his special responsibility.

Under his Instructions the Governor is to encourage all classes of the population to take their proper place in the public life and government of the Province, to secure minorities a due share of appointments, to protect civil servants from inequitable treatment, to prevent measures which would discriminate though not in form discriminatory, and to avoid interference with the rights of the States. The Governor of the Central Provinces and Berar is to have due regard in the administration of Berar to the commercial and economic interests of Hyderabad. The Governor of every Province has to keep the Governor-General informed of the position of the civil servants in the

Irrigation Department. The Governor corresponds with the Governor-General in respect of all questions affecting the Federation. He is not prevented from having direct relations with the Secretary of State.

ADVOCATE-GENERAL  
FOR PROVINCE

The Governor is given special powers in matters of law and order. He appoints in his individual judgment an Advocate-General for his Province, a person qualified to be a judge of a High Court, whose position in the Province is similar to that of the Advocate-General for the Federation.

The Governor exercises his individual judgment as to the making, or amendment, of any rules relating to any police force, unless they do not affect its organisation or discipline. He may also, if he thinks that the peace or tranquillity of the Province is endangered by the operation of any person committing or contemplating crimes of violence for the overthrow of the Government, direct that any of his other functions shall also be exercised at his discretion. He may in his discretion authorise an official to speak and take part in the legislature as his mouthpiece on these questions. This official has the same powers and rights except the right to vote as an elected member. He may also in his discretion make rules providing that information in relation to the sources from which information as regards such criminal intentions has been obtained shall not be divulged by any police force member to another member, except with the authority of the Inspector-General or Commissioner of Police, or to any other person except on his direction.

All executive actions of the Provincial Government

are expressed in the name of the Governor. All orders and instruments for acquiring validity are to be duly authenticated according to rules. The Governor, after consultation with ministers, makes in his discretion rules for the transaction of the business of the Government. His Instructions require him to secure due consultation of the Finance minister on all financial matters. He is required to encourage joint responsibility among ministers and to avoid any action which permits ministers to evade their own responsibilities by placing the onus on him.

THE GOVERNOR'S  
SECRETARIAL STAFF

The Governor has his own secretarial staff appointed by him in his discretion. The salaries and allowances of the staff are fixed by him and they are charged on the revenues of the Province.

TRUE NATURE OF  
THE EXECUTIVE

The provincial executive is theoretically a responsible executive. The whole sphere of provincial government is entrusted to ministers appointed by the Governor from the elected members of the legislature. Generally speaking, if parties in the legislature are organised on broad issues of policy it is possible to evolve a responsible government. But the sphere covered by the matters in respect to which the Governor has special responsibilities is so large as to restrict the scope of responsible government. Moreover, the instructions to the Governor to have due regard to the interests of minority communities in the selection of ministers will hamper the growth of responsible government, which postulates the homogeneity and collective responsibility of the ministry. Further, the existence of an electorate

which recognises communal representation and which is rigidly divided into various groups is inconsistent with the elementary principle of responsible government. Again, the special responsibilities of the Governor and the safeguards and reservations effectively limit the functioning of responsible government. The Joint Select Committee observe: "Parliamentary Government, as it is understood in the United Kingdom, works by the interaction of four essential factors: the principle of majority rule; the willingness of the minority for the time being to accept the decisions of the majority; the existence of great political parties divided by broad issues of policy, rather than by sectional interests; and finally the existence of a mobile body of political opinion, owing no permanent allegiance to any party and therefore able, by its instinctive reaction against extravagant movements on one side or other, to keep the vessel on an even keel."

In India none of these factors exists to-day. But there is in India a background and a foreground for creating these factors by a suitable machinery which in its functioning can easily consolidate and develop these requisite factors and forces. Strangely, the very scheme of representation in the legislature and of the selection of ministers is such as to prevent the formation of these conditions and also to intensify forces and factors which would make their evolution more difficult if not impossible. It is pointed out that in substance the executive in the Province is not and cannot be a responsible executive, as the representation in the legislature and the composition of the ministry are based on principles which are essentially incompatible with the system of Parliamentary government.

The Joint Select Committee makes this point clear. It states that: "It must be recognised that, if free play were given to the powerful forces which would be set in motion by an unqualified system of Parliamentary government, the consequences would be disastrous to India, and perhaps irreparable." The Reforms of 1919 were designed as the first stage in the measured progress towards responsible government in the Provinces. The Government of India Act, 1935, is at best intended to set up a machinery which may facilitate the evolution of responsible government in the Provinces. But it is pointed out that having regard to the social conditions of the people in the Provinces and in the absence of disciplined political parties and of a mobile body of political opinion, the nature and the form of responsible government in the Provinces cannot be different from what it is in the New Constitution.

## CHAPTER VIII

### THE PROVINCIAL LEGISLATURES

"The success of a constitution depends, indeed, far more upon the manner and spirit in which it is worked than upon its formal provisions."

#### I. Historical

The history of the legislatures in the Provinces up to 1833 is already given in the chapter on the Central Legislature.

The Charter Act of 1833 simplified the legislative machinery. The Governments of Bombay and Madras were drastically deprived of their powers of legislation and left only with the right of proposing to the Governor-General in Council projects of laws which they thought expedient. The Indian Councils Act of 1861 restored to Madras and Bombay the powers of legislation. But the previous sanction of the Governor-General was made requisite for legislation by local authorities in certain cases, and all Acts of the local councils required the subsequent assent of the Governor-General in addition to that of the Governors. The provincial legislatures were merely enlargements of the provincial executive councils, for the purposes of legislation.

By the Indian Councils Act of 1893 the provincial legislatures were enlarged, but an official majority was maintained. Their functions, which were enlarged, were mostly advisory. By the Morley-Minto Reforms of 1909 the provincial legislatures were further

enlarged up to a maximum limit of fifty additional members in the larger Provinces, and up to thirty in the smaller, and a non-official majority was introduced. The principle of election was recognised in an indirect manner. Communal representation was introduced for the first time. The Morley-Minto councils, with powers to legislate and to advise but with no effective administrative control, had been presided over by the head of the provincial executive himself, who exercised great influence over all deliberations. These councils still embodied the idea that the executive government was responsible for the purposes of law-making. The Montagu-Chelmsford Report definitely stated that these councils had exhausted their usefulness by 1918.

THE ACT OF 1919 By the Government of India Act, 1919, important changes were introduced in the composition and functions of the provincial legislatures. In the Governors' Provinces the Act set up a unicameral and triennial legislature called the Legislative Council. The president of the council was elected after the first four years by its own members and approved by the Governor. At least seventy per cent of its members were elected and not more than twenty per cent were official members. The franchise was broadened. Communal representation was not only recognised but was further extended. The authors of the Montagu-Chelmsford Report expressed their opinion that the communal electorate was opposed to the teaching of history, that it perpetuated class divisions, that it stereotyped existing relations and that it constituted "a very serious hindrance to the development of the self-governing principle." But

none the less they admitted the need of its continuation and conceded it to the Sikhs in the Punjab. In all Provinces constituencies were divided into Muhammadan and non-Muhammadan. The principle of communal representation was further supplemented by special arrangements for reservation of seats for certain sections of population such as non-Brahmins and Marathas. Depressed classes, apart from their right of voting in the non-Muhammadan constituencies, were given further representation by nomination. Nomination was resorted to to secure representation of the workers in organised industries. Separate electorates were provided for Indian Christians, Anglo-Indians and Europeans, special seats were given to business interests both Indian and European, to landlords and universities. Thus the representation of the electorate for introducing responsible government was strangely but truly the representation of rival communities and different interests.

The powers of the legislatures were enlarged. They were given powers to legislate "for the peace and good government of the province subject to certain qualifications." But on a specified list of matters they could not legislate even for their own territorial area without the previous sanction of the Governor-General. Moreover bills passed by provincial legislatures required the assent not only of the Governor but also of the Governor-General. Certain classes of bills affecting religion, land revenue, etc., were to be reserved by the Governor for consideration of the Governor-General. The Governor had the usual power of veto. He had also the power of "certification." It meant that if the legislature refused to pass a bill relating to a reserved subject the Governor could certify that

the passage of the bill was "essential for the discharge of his responsibility for the subject." By so certifying it the bill was put in the same position as though it had been actually passed by the legislature. An analogous power of over-riding the unwillingness of the provincial legislature was placed in the Governor's hands in relation to finance. The provincial expenditure was divided into non-votable and votable items. The former comprised nearly seventy-five per cent of the total provincial expenditure. The legislature had thus a control over twenty-five per cent of the expenditure, subject to the Governor's power of restoring the item of expenditure refused by the legislature if that expenditure was essential to the discharge of his responsibility. Again, the Governor had power in cases of emergency to authorise necessary expenditure for the safety or tranquillity of the Province.

## II. Constitution of the Provincial Legislatures under the Government of India Act, 1935

Under the Government of India Act, 1935, the provincial legislatures consist of the King, represented by the Governor, and one or two chambers.

Bombay, Madras, Bengal, the United Provinces, Bihar and Assam have two chambers (bicameral system of legislature) known as the Legislative Council and the Legislative Assembly. The rest of the provinces—the Punjab, the Central Provinces and Berar, the North-West Frontier Province, Orissa and Sind have a single chamber (unicameral system of legislature) called the Legislative Assembly. Before 1937 all the Provinces had only one chamber. The second chamber is created to provide a check on hasty and rash legislation and to secure the representation of the vested interests.

Indian public opinion was against the creation of a second chamber in the Provinces.

**COMPOSITION** The Legislative Assemblies of the Provinces are composed as follows:—Madras 215 members, Bombay 175,<sup>1</sup> Bengal 250, the United Provinces 228, the Punjab 175, Bihar 152, the Central Provinces 112, Assam 108, the North-West Frontier Province 50, Orissa 60 and Sind 60.

All members of the Assembly are elected. The electorate in every Province is divided into different communities and interests. It is formed in accordance with the terms of the Communal Award given by the British Government on August 19, 1932, as modified by the Poona Pact of 1932 and by the creation of the new province of Orissa. The Communal Award has in every Province assigned a definite number of seats to Muhammadans,<sup>2</sup> Sikhs and Indian Christians.

<sup>1</sup> For the details of the composition of the Bombay Legislative Assembly see p. 116.

<sup>2</sup> During the session of the Second Round Table Conference in London the representatives of the various communities failed to reach an agreement as to the composition of the proposed provincial legislatures, principally because of a radical divergence of opinion on the vital question of separate electorates and the distribution of communal seats. As they failed to reach an agreement they requested the Prime Minister to decide the question. Pursuant to that request, His Majesty's Government issued the Communal Award on August 19, 1932, by which the seats in the provincial legislatures are distributed among various communities with the object of securing adequate representation of the minority communities. It is not to be altered unless the alteration is desired by the communities themselves, but no such alteration could be made without the specific consent of Parliament. The provision for the representation of the Depressed Classes in the Award was not acceptable to the Hindu Community, as it was likely to destroy the unity of the community. On the protest of Gandhiji, the Poona Pact was signed and its terms were given effect by the modification of the Award to that extent. The modified terms are intended to preserve the unity of the Hindu Community. The Communal Award was subjected to much criticism by the Hindu Mahasabha and the Hindus of Bengal.

The Poona Pact has secured the representation of the depressed classes, now officially known as the scheduled castes, in all Provinces. The scheduled castes which are specified in an Order in Council made on April 30, 1936, vote in a specified manner which is intended to preserve the unity of the Hindu society and to secure adequate representation for them.<sup>1</sup> The members of the scheduled castes in the registered electorate meet in primary elections and choose four candidates for each vacancy reserved for them, and the candidate who is given the first place in voting by the general electorate is elected for the seat. Thus in all Provinces seats assigned to Hindus are known as general seats, which include the seats reserved for the scheduled castes, and for other small communities like Parsis. Seats are also assigned to Muhammadans, to Sikhs in the Punjab and the North-West Frontier Province, to Europeans, Anglo-Indians, Indian Christians, representatives of commerce, industry, mining, planting except in the North-West Frontier Province. Seats for women are provided in most Provinces, and special seats for an Anglo-Indian woman in Bengal, for a Sikh woman in the Punjab and for a Christian woman in Madras. The total number of seats in all the provincial legislatures is 1,535, of which Hindus have 808 including 151 reserved for the scheduled castes, Muhammadans have 482 and women have 41.

In Bengal, where Muhammadans have 117 seats and a few others under different heads, a Muhammadan

<sup>1</sup> The number of the scheduled castes in nine Provinces is as follows:—

Madras 74, Bombay 35, Bengal 76, the United Provinces 60, the Punjab 27, Bihar 14, the Central Provinces 39, Assam 20, Orissa 43. These castes are scheduled castes throughout the Provinces.

majority is assured. In the Punjab the Muhammadans have 84 seats and the Sikhs have 31 out of 175. In the North-West Frontier Province the Muhammadans have 36 seats out of 50, and in Sind the Muhammadans have 33 out of 60. In other Provinces the Hindus have a majority.

COMPOSITION OF  
THE LEGISLATIVE  
COUNCILS

The composition of the Legislative Councils in the six Provinces is as follows:—Madras 54 to 56 members, Bombay 29 to 30, Bengal 63 to 65, the United Provinces 58 to 60, Bihar 29 to 30, and Assam 21 to 22.<sup>1</sup>

The Assembly, unless dissolved sooner, continues for five years. The Council is a permanent body, one-third of its members retiring every third year. Both chambers have to hold annual sessions. The interval between the two sessions of the chamber should not extend beyond six months. The Governor may in his discretion summon either chamber or both, prorogue them or dissolve the Assembly. He may address the Legislative Assembly or both chambers

<sup>1</sup> In Madras the minimum number is 54, the maximum is 56. There are 35 general seats, 7 Muhammadan, 1 European, 3 Indian Christian, and from 8 to 10 nominated by the Governor to secure due representation particularly of the scheduled castes and women. In Bombay the maximum number is 29 to 30. There are 20 general seats, 5 Muhammadan, 1 European, and from 3 to 4 to be nominated by the Governor in the same manner as in Madras. In Bengal the number is 63 to 65. There are 10 general seats, 17 Muhammadan, 3 European, and 27 are to be filled by the Assembly by proportional representation with a single transferable vote and from 6 to 8 nominated by the Governor. In the United Provinces the number is 58 to 60. There are 34 general seats, 17 Muhammadan, 1 European, and from 6 to 8 nominated by the Governor. In Bihar the number is 29 to 30. There are 9 general seats, 4 Muhammadan, 1 European, and 12 selected by the Assembly by proportional representation with a single transferable vote and from 3 to 4 nominated by the Governor. In Assam the number is 21 to 22. There are 10 general seats, 6 Muhammadan, 3 European, and from 3 to 4 nominated by the Governor.

and for that purpose require the attendance of the members. He may send to them a message on pending bills or other matters. The chamber has to consider the matter referred to in the message without delay. Ministers and the Advocate-General may speak in the chamber or chambers or in the joint sittings and take part in the proceedings, but may only vote if elected or nominated a member. Each chamber selects its Speaker and Deputy-Speaker from amongst its members. The Speaker or Deputy-Speaker vacates his office if he ceases to be a member of the chamber. He may resign his office. He may be removed only by a vote of the majority of all members on fourteen days' notice. On the dissolution of the chamber the Speaker does not vacate his office until immediately before the first meeting of the new Assembly. The salaries of the Speaker and the Deputy-Speaker are fixed by the Governor till they are fixed by the legislature.

All questions in the chamber or in the joint sitting of the two chambers are determined by a majority of votes of the members present and voting other than the presiding officer who has only a casting vote. The Speaker or the presiding officer has to adjourn or suspend a meeting if less than one-sixth of the members are present, or if during the meeting less than ten persons, who constitute the quorum, are present. In the joint sitting the president of the Council presides.

#### MEMBERS OF THE LEGISLATURE

Members must be British subjects or rulers of States or subjects of the federated States. Every member has to take an oath or affirmation of loyalty

or allegiance to the King before he takes his seat. A member may resign his seat. No person can be a member of both chambers. If a person is chosen by both chambers, he has to resign from one. No person may be a member of the federal as well as of the provincial legislature. The provincial seat becomes vacant at the expiration of a prescribed period unless he has resigned his seat in the federal legislature. The seat of a member becomes vacant if he resigns it or becomes subject to any of the prescribed disqualifications. The disqualifications are, (1) holding of any office of profit under the Crown, (2) unsoundness of mind declared by a competent court, (3) undischarged bankruptcy, (4) conviction of offences in connection with elections, (5) conviction in British India or a federated State of an offence punished by transportation or imprisonment of not less than two years, unless five years have elapsed since release and, (6) failure in certain cases to return electoral expenses. A person serving a sentence of transportation or of imprisonment for a criminal offence cannot be chosen. If a disqualified person sits and votes he has to pay a penalty of Rs. 500 a day, which is recoverable as a debt due to the Province.

#### PRIVILEGES OF MEMBERS

With the object of enabling the members to express their opinion freely and fearlessly on all issues in the legislature, they are given certain valuable privileges. Subject to the rules and standing orders regulating the procedure, freedom of speech is assured to members in each chamber. No member is liable to any proceeding in any court for anything said or any vote given by him, and no person is liable for the publication by

the order of a chamber of any report, paper, votes or proceedings. Till other privileges are defined by the legislature, the members are to enjoy all the privileges enjoyed by the members of the former legislature. Every chamber has got a right of removing or excluding persons infringing the rules or standing orders or otherwise behaving in a disorderly manner.

Members receive such salaries and allowances as are fixed by the legislature and till they are so fixed they are to be paid at the same rate as in the former legislature.

**PROCEDURE** The provincial legislature regulates its own procedure and business. The Governor in his discretion after consultation with the Speaker makes rules regulating the procedure and the conduct of business in matters arising out of or affecting any of his special responsibilities. He makes rules for securing the timely completion of financial business, prohibiting the discussion of, or asking questions on, any matters connected with any Indian State unless in his opinion it affects the interest of the Provincial Government or of British subjects resident in the Province. He may make rules prohibiting, save with his permission, the discussion of questions concerning the relations of the King, the Governor-General and any foreign State or Prince, and relating to matters connected with tribal areas or excluded or partially excluded areas, the personal conduct of the ruler of any Indian State or a member of the ruling family. The Governor also makes rules for the joint sittings of the chambers.

All proceedings in the provincial legislature are in English, but the rules permit persons unacquainted

or not sufficiently acquainted with the English language to use another language.

**LEGISLATIVE  
PROCEDURE**

A bill may, except in the case of a finance bill, originate in either chamber. A pending bill does not lapse on the prorogation of a chamber or chambers. A bill pending or passed by the Assembly but pending in the Council lapses on the dissolution of the Assembly. In provinces with two chambers a bill requires the assent of both chambers to become law. If a bill is not presented to the Governor for his assent within twelve months after it has been sent by one chamber to another, the Governor may in his discretion call a joint sitting, and he may do so within a shorter period if the bill relates to finance or a matter of his special responsibility. If the bill is passed by a majority in the joint sitting, it is deemed to have been passed. Where a bill has been passed in a chamber or chambers it must be presented for assent to the Governor. He may assent to it in the name of the King, or withhold his assent, or reserve it for the consideration of the Governor-General. He may return it with a message to the chamber to reconsider it with amendments. If a bill is repugnant to an Imperial Act or is derogatory to the position of the High Court, or affects the Permanent Settlement or appears to provide for discrimination, it has to be reserved. The Governor-General may assent to a reserved bill or refuse assent or reserve it for the signification of the King's pleasure or direct the Governor to return it with the message for reconsideration. A bill reserved becomes an Act only if within twelve months of its presentation to the Governor he publishes the assent of the King. An

Act assented to by the Governor or the Governor-General may be disallowed by the King within twelve months, and if it is disallowed it becomes void from the date of disallowance.

No discussion is allowed with respect to the conduct of a judge of the Federal Court or of a High Court in discharge of his duties. The Governor has power to prevent discussion of any bill, clause, or amendment which is likely to affect his responsibility for the peace or tranquillity of the Province.

The members of the chamber or chambers have the right of asking questions and also supplementary questions on public matters. They have also the right to move resolutions on any matters falling within the sphere of the legislature. These rights are exercised with a view to acquainting the executive with the opinion and feeling of the members on the policy and action of the Government. The members have also the right of moving motions for adjournment whenever they want to draw the attention of the executive to an event of recent occurrence or to any matter of urgent public interest which has arisen suddenly. There is a regular procedure laid down for the exercise of this right.

#### PROCEDURE IN FINANCIAL MATTERS

The Governor is required to lay before the legislature the annual financial statement of the estimated receipts and expenditure, showing separately the sums charged on the revenues of the province, and sums required to meet other expenditure proposed to be made from provincial revenues. Expenditure necessary for the discharge of the Governor's special responsibility is also distinctly indicated.

The items of expenditure charged on the revenues of the Province and which are non-votable are, (1) Governor's salary and allowance, (2) debt charges, (3) the salaries and allowances of ministers, Advocate-General and judges of the High Court, (4) expenditure for excluded areas, (5) sums necessary to satisfy any judgment decree or award of court, (6) any other expenditure charged by the Act. The Governor in his discretion decides whether any proposed expenditure is so charged or not. Except the sum for the salary and allowance of the Governor, which is not subject to discussion, other items of this expenditure may be discussed by the legislature, but they are not votable by it. Expenditure not so charged is votable and must be submitted to the Legislative Assembly in the form of demands for grants. The Assembly may assent, or refuse or reduce the amount. Only the Governor can recommend the expenditure.

The Governor authenticates by signature a schedule of grants made, sums charged on the revenues of the province, and also grants refused or reduced by the Assembly but included by him to enable him to discharge his special responsibility. The authenticated schedule must be presented to the Assembly, but it is open neither to discussion nor vote. It forms the authority for expenditure for the year. The Governor may submit a supplementary statement for additional expenditure when necessary.

The legislature has no initiative in the case of a bill or amendment for imposing or increasing taxation, regulating the borrowing of money, giving a guarantee affecting financial obligation undertaken or to be undertaken by the Province or charging expenditure on provincial revenues or increasing the amount.

The Governor has the initiative in recommending such a bill. Such a bill cannot be introduced in the Legislative Council. No bill, if it involves expenditure, may be passed by the legislature without the Governor's recommendation. Special security is provided for the expenditure on European and Anglo-Indian education.

#### POWER OF GOVERNOR TO PROMULGATE ORDINANCES DURING RECESS OF LEGISLATURE

The Governor is given emergency powers as regards legislation. He may at the instance of his ministers, when the legislature is not in session, if satisfied that circumstances exist which require immediate action, issue an ordinance. A Governor must use his judgment, if the ordinance relates to a matter which could have been dealt with by a bill with his or the Governor-General's prior sanction. He must not, without the Governor-General's sanction, issue an ordinance which, as a bill, could only have been introduced with the latter's sanction or which must have been reserved. An ordinance has the same force and effect as an Act of legislature. It must be laid before the legislature when it meets, and lasts only for six weeks unless disapproved earlier by resolution of the chamber or chambers. It may be disallowed by the Crown. It may be withdrawn at any time by the Governor.

#### POWER OF GOVERNOR TO PROMULGATE ORDINANCES AT ANY TIME WITH REGARD TO CERTAIN MATTERS

The Governor may also under similar circumstances, in matters involving his discretion or individual judgment, issue an ordinance having a duration of six months but capable of being extended for a further

period of six months. It may be disallowed by the Crown or withdrawn by the Governor. If it is an extended ordinance it must be communicated through the Governor-General to the Secretary of State and shall be laid before Parliament. This power of issuing an ordinance must be used with the concurrence of the Governor-General except in emergency. If it is issued without the concurrence of the Governor-General, the Governor-General may direct the Governor to withdraw it.

#### GOVERNOR'S POWERS TO ENACT ACTS

The Governor, with the concurrence of the Governor-General, may, if he considers that for the discharge of the functions which are in his discretion or judgment provision by legislation is necessary, issue permanent Acts known as Governor's Acts either forthwith or after considering the views of the legislature. Every Governor's Act must be communicated forthwith through the Governor-General to the Secretary of State and shall be laid before Parliament. This is a new power given to the Governor.

#### EXCLUDED AREAS AND PARTIALLY EXCLUDED AREAS

In every Governor's Province there are areas which are excluded areas or partially excluded areas. They are defined by Order in Council issued March 3, 1936. The King in Council may direct that the whole or any part of the excluded area shall become part of the partially excluded area, that the whole or any part of a partially excluded area shall cease to be a partially excluded area or a part of it. He may also alter or rectify boundaries of any of these areas. An area originally defined as excluded cannot cease to be such.

These areas are backward, hence it is thought that the ordinary machinery of administration in a Governor's Province is not suitable for them. This being so, special provision is made for their administration. The executive authority of the Province extends to such areas, but in the case of excluded areas the Governor must exercise it in his discretion. No federal or provincial Act may apply to these areas except under notification by the Governor, who may provide for its modification or exceptions in its application. The Governor may make regulations for the peace and good government of any excluded area and repeal or modify in question. Those regulations must be submitted to, and any federal, provincial or other law applicable to the area assented to by, the Governor-General in his discretion before they come into force. Such regulations may be disallowed by the King.

#### PROVISION IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY

The Governor is given special powers in case of the failure of constitutional machinery. If he is satisfied that a situation has arisen in which the government of a Province cannot be carried on under the Act he may in his discretion, with the concurrence of the Governor-General, issue a proclamation declaring that his functions to such extent as may be specified in the proclamation shall be carried on by him at his discretion, and assuming to himself all or any powers exercisable by any provincial body or authority. To give effect to it he may modify the Act as far as it affects any provincial body or authority, except the powers vested in and exercisable by the High Court. Any such proclamation may be revoked or varied by subsequent

proclamation. It must be communicated forthwith to the Secretary of State and laid before both Houses of Parliament. It ceases to operate after six months unless both Houses of Parliament approve its continuance. In that case it shall remain in force for a further period of twelve months, but in no case will it remain in force for more than three years. Laws made by the Governor under the proclamation have effect for two years after their expiry, subject to their repeal or amendment by the appropriate legislature.

### **III. The Chief Commissioners' Provinces**

The Chief Commissioners' Provinces are British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, Panth-Piploda and such other Provinces as may be created under the Act. These Provinces are administered by the Governor-General acting through Chief Commissioners appointed by him in his discretion.

The executive authority of the Federation extends to all these Provinces, but for British Baluchistan the Governor-General shall act in his discretion. No federal Act applies to British Baluchistan unless the Governor-General directs its application to it with or without modifications. The Governor-General may, subject to disallowance by the King, make regulations for it which may supersede any federal Act or other law applicable to it. The Governor-General may make regulations for the Andaman and Nicobar Islands. In Coorg, until the new machinery is provided, the existing legislature and financial arrangements will continue. The rules applicable in Governors' Provinces to police organisation, crimes of violence to overthrow

Government and those relating to the non-disclosure of records and information are also applicable in these Provinces. Provincial status may be conferred on any of them under the Act.

#### IV. Provincial and Federal Franchises

"Parliament can provide the conditions in which the creation of a homogeneous Indian nation may become possible; but the act of creation must be the work of Indian hands."

J. S. C. REPORT.

The New Constitution is based on a broad franchise. Under the Act of 1919, there were initially 8,744,000 voters, of whom 398,000 were women, all representing only three per cent of the total population. The Simon Commission recommended the enfranchisement of not less than ten per cent of the total population. The first Round Table Conference favoured enfranchisement of the people up to twenty-five per cent of the population. The second Round Table Conference appointed a Franchise Committee for fixing the franchise and it is on its findings that the arrangements for the franchise are based. The franchise extends widely and the object is to give the vote to fourteen per cent of the population—29,000,000 males and 6,000,000 females.

#### PROVINCIAL FRANCHISE

For the Provincial Assemblies provision for franchise is partly made in the Act and is supplemented by Order in Council issued on April 30, 1936. It is based on the findings of the Delimitation Committee.

There are territorial constituencies. In them there are general seats, and seats for Muhammadans, Anglo-Indians, Europeans, Indian Christians, and Women.

On the findings of the Delimitation Committee an electoral roll is prepared for each constituency, and the persons belonging to the special classes are enrolled in them and are excluded from the general constituency. No person can vote at a general election in more than one territorial constituency. An exception is made in case of some women.

In Bombay Presidency, the distribution of seats is as follows: General 105, Muhammadan 29, Women 6, Anglo-Indian 2, European 3, Indian Christians 3, Commerce and Industry 7, Landholders 2, Labour 7 and University 1. Out of 175 seats, 92 are rural and 83 are urban. This distribution is meant to secure an adequate representation of the rural areas. The total number of electors in all constituencies of the Bombay Legislative Assembly is 2,287,041, of whom 299,981 are women. Territorial constituencies on similar lines are also provided for the Legislative Councils. The total number of electors in all constituencies of the Bombay Legislative Council is 14,697, of whom 1,665 are women. Assignment to a territorial constituency is based on residence, but the nature and length of residence varies from Province to Province. (Bombay requires 180 days residence.)

The qualification for the franchise in territorial constituencies is based on property which may be measured by land revenue, or conditions of agricultural tenancy, by assessment for income tax, and in the case of towns by the amount of rent paid. These conditions vary in details in each Province, but attempts are made to secure same types of voters in all Provinces. These conditions are supplemented by special qualifications to secure adequate representation of women and depressed classes. Approximately ten per cent

of the depressed classes are enfranchised. Special qualifications are prescribed for the voters of the non-territorial constituencies: Commerce and Industry, Landholders, Labour and Minorities. In addition, all officers, non-commissioned officers and members of the Indian forces and police forces are given the vote if on pension or retired.

**WOMEN** In general, women who have property qualifications are enfranchised in their own right. Wives or widows of men so qualified for voting, or wives of men with a service qualification, or pensioned widows or mothers of members of the military or police forces or women possessing a literary qualification are all enfranchised. If a woman does not hold any qualification in her own right she has to make an application for enrolment.

#### FEDERAL FRANCHISE

**FEDERAL ASSEMBLY** The election for the Federal Assembly is indirect through the provincial legislatures, hence no question of franchise for it can arise.

**COUNCIL OF STATE** The election to the Council of State is direct. A special franchise is provided for it. It is to be based on the franchise for the existing Council of State, broadening it so as to give the vote to about 1,000,000 persons. This franchise is, among other things, based on very high property qualifications or very high assessment for income tax.

## CHAPTER IX

### DISTRIBUTION OF THE LEGISLATIVE POWER

A federation, as already explained, means the coming together of independent units which, while preserving their identities, look to the centre to deal with matters common to all. It essentially involves an agreement between them to place in the hands of some central body duties and powers to be exercised by it on behalf of them all, while the constituent units retain unimpaired their autonomous authority in other respects. Thus a federation necessarily involves distribution of legislative, executive, judicial and financial powers between the federation and the federating units: the Provinces of British India and the States. The legislative and financial spheres of the Federation and the Provinces are clearly and definitely defined and demarcated. The federal legislature makes laws for the whole or any part of British India or for any Federated State to the extent to which that State has agreed by the Instrument of Accession, and the provincial legislature does so for the Province or any part thereof. For the purposes of legislation the Constitution provides three lists: the federal legislative list, the provincial legislative list and the concurrent legislative list.

#### THE FEDERAL LIST

The federal legislature has power to make laws with respect to matters enumerated in the federal list. All these matters are those which

affect the whole of India or which require uniform treatment. There are fifty-nine subjects in this list.<sup>1</sup>

**THE PROVINCIAL LIST**      The provincial legislature has power to make laws on matters in the provincial list. There are fifty-four subjects in the provincial list.<sup>2</sup> These subjects are essentially of provincial interest.

**CONCURRENT LIST**      Experience in other countries, as well as the highly centralised system prevalent in British India before 1937, necessitated the provision of a concurrent list of subjects which are essentially of a provincial nature but which require co-ordination and uniform treatment. Both the federal legislature and the provincial legislature have power to make laws on matters in this list. There are thirty-six subjects in this list, of which twenty-five are in Part I and eleven in Part II of the list.<sup>3</sup> There is a possibility

<sup>1</sup> The most important of the subjects in the federal list are: naval, military and air forces, external affairs, currency and coinage, federal public debt, posts, telegraphs, federal public services, federal public service commission, ancient and historical monuments, census, federal railways, maritime shipping and navigation, copyright, arms and ammunitions, corporations, insurance, banking, federal elections, customs duties, corporation tax, salt, stamp duties, migration, taxes on income and terminal taxes.

<sup>2</sup> The most important of the subjects in the provincial list are: public order, police, prisons, provincial public debt, provincial public services and provincial public service commission, local government, public health, education, agriculture, land and land tenures, forests, relief of poor, unemployment, land revenue, duties on goods, taxes on agricultural income, duties in respect of succession to agricultural land, taxes on mineral rights, capital taxes, taxes on professions, taxes on sale of goods, cesses on the entry of goods, stamp duty, tolls.

<sup>3</sup> The most important of the subjects in the concurrent list are:—

Part I. Criminal law, criminal procedure, civil procedure, evidence and oaths, marriage and divorce and other similar subjects

of a conflict between the federal and provincial legislation as regards a subject in this list. Hence it is provided that a Federal Act or an existing Indian Act on a concurrent subject generally overrides a Provincial Act if there is a conflict between them. But if a Provincial Act on a concurrent subject is repugnant to a Federal Act or Indian Act, and if it has been reserved by the Governor for the assent of the Governor-General or the Crown and is assented to by the Governor-General or the Crown, it prevails over prior legislation. But the federal legislature may, with the previous sanction of the Governor-General for the introduction of such a bill, enact further legislation on the same matter.

As regards the States, the Federation may legislate only in respect of matters accepted by or agreed to by the Instruments of Accession of the States concerned. A State may legislate on the subject, but its legislation is void in so far as it is inconsistent with the valid Federal Act.

**RESIDUAL POWER** The three legislative lists are fairly exhaustive, but it is beyond the wit of man to visualise all possible matters which may arise in future and on which legislation may be necessary. Hence provision is made for the residual power of legislation. When any matter not included in the three lists crops up, the Governor-General may, in his discretion, by public notification empower either the federal legislature or the provincial legislature to

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of law, stamp duties, newspapers, books and printing presses, boilers, etc.

Part II. Factories, welfare of labour, unemployment insurance, trade unions, prevention of infectious diseases, electricity, inland shipping and navigation.

enact a law or impose a tax not included in the lists. The executive authority of the Federation or of the Province extends to the administration of such a law. In so assigning it, the Governor-General decides whether the subject is already enumerated in the lists or not. In doing so, he has to seek the advisory opinion of the Federal Court. As regards the States, all subjects except those transferred by them to the Federal Government by their respective Instruments of Accession are reserved to them.

#### A STATE OF EMERGENCY

If the Governor-General in his discretion declares by proclamation that a grave emergency exists whereby security in India is threatened by war or internal disturbance, the federal legislature has power to make a law for a Province even on matters in the provincial list. Previous sanction of the Governor-General is necessary to the proposed legislation. The Governor-General shall not give his sanction unless he is satisfied that the proposed provision is proper. Such a law prevails over the provincial law either prior or subsequent to the proclamation. The preliminary proclamation of emergency which empowers such federal legislation may be revoked by a subsequent proclamation. It must be communicated forthwith to the Secretary of State and laid before the Houses of Parliament. Such emergency federal law expires six months after the expiry of the proclamation of emergency.

#### POWER OF THE FEDERAL LEGISLATURE TO LEGISLATE FOR TWO OR MORE PROVINCES

The federal legislature has power to regulate in two or more Provinces matters in the provincial list

at the request of the chambers of those Provinces. Any such Act may be amended or repealed by the provincial legislatures.

The federal legislature by legislation may apply the Naval Discipline Act to India with necessary modifications.

### **The Prevention of Discrimination**

The possibility of legislative discrimination in India against British subjects domiciled in the United Kingdom is recognised, and the plan adopted is to exempt such subjects from the operation of any federal or provincial Act which restricts entry into India, or imposes, by reference to place of birth, etc., any disability, restriction or condition in respect of travel, residence, the holding of property or public office, or the carrying on of any occupation, trade, business, or profession. But this exemption does not apply in so far as Indian subjects are subject to similar restrictions in the United Kingdom. It is not illegal to apply quarantine regulations or to exclude or deport undesirables. Again, in the case of grave menace to tranquillity or to combat crimes of violence the Governor-General may suspend temporarily the security afforded. No differentiation in taxation is allowed against British subjects domiciled in the United Kingdom or British companies, or Burman subjects domiciled in Burma or Burman companies. British companies are afforded protection on the basis of reciprocity. The right of medical practitioners in British India and in the United Kingdom to practise in either country is placed on the same footing. Permission is given to the Indian legislature to confine

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subsidies for the encouragement of trade and industry, in the case of companies not engaged in such branches at the time of the legislation, to such bodies as are incorporated under the rules of British India, and which offer facilities for training Indians, and have up to half of their directors Indians.

### ADMINISTRATIVE RELATIONS BETWEEN THE FEDERATION AND THE UNITS

The executive authority of each unit must be so exercised as to secure respect for the federal laws. Federal Acts may impose duties on a Province or a State to secure this object. The Governor-General may agree to entrust executive federal functions to a State or Province. Rulers may stipulate for the administration of federal laws, but the Governor-General must be able to satisfy himself as to the due execution of the law. The Governor-General has also power to give directions to rulers if they act so as to prejudice the exercise of the executive authority of the Federation, or fail to carry out obligations as to administering federal laws. The Governors of the provinces may be instructed to use their executive power in any way necessary to prevent menace to the peace or tranquillity of India. The Governor-General is given special powers in respect of questions of broadcasting, the Provinces and the States being entitled to reasonable facilities of transmission. He has also special powers in respect of issues affecting water rights, to the exclusion of judicial intervention. Moreover, the King in Council may establish an inter-provincial council to deal with inter-provincial disputes, and discuss matters of common interest.

## CHAPTER X

### FEDERAL FINANCE

"The Provinces have rarely had means adequate for a full development of their social needs, while the Centre, with taxation at a normal level, has no greater margin than is requisite in view of the vital necessity for maintaining unimpaired both the efficiency of the defence services and the credit of the Government of India."

J. S. C. REPORT.

"In spite of the widespread poverty in India, I see no reason to doubt that the public revenues of India can be substantially increased without taxation becoming intolerable, provided that the incidence is adjusted to the capacity of tax-payers to pay and that heavy additional burdens are not put upon primary necessities."

W. T. LAYTON.

"No entirely satisfactory solution of the allocation of financial resources has yet been found in any federal system."

J. S. C. REPORT.

#### I. Historical

The East India Company, working on commercial principles, kept full control of all revenues and expenditure in their own hands. Till 1858, there was a highly centralised system of government, under which the Governor-General in Council retained complete control over financial resources as well as expenditure. Though there was a complete reorganisation of the finances of British India after the transfer of government from the Company to the Crown in 1858, no innovation was made in this respect. The Provincial Governments remained merely agents of the Central Government for collecting revenues, and

they could not incur any expenditure, however trivial, without the formal orders of the Government of India. In short, in 1861 there was complete, thorough and effective financial centralisation.

The financial history of the next sixty years is very largely a history of the growth of the financial authority of the Provincial Governments by a gradual process of devolution of powers to them from the Central Government.

Mr. James Wilson, who was appointed the Finance member of the Government of India in 1859, found a deficit in the Indian Budget. Hence his first task was to restore financial equilibrium. The financial stringency rendered any relaxation of central control over provincial revenues and expenditure impracticable. The centralised system had three defects: (1) the distribution of the public income among the Provincial Governments every year degenerated into something like a scramble in which the most violent had the advantage, (2) as local economy brought no local advantage, the stimulus to avoid waste was reduced to a minimum, (3) as no local growth of income led to local means of improvement, the interest in developing the public revenues was also brought down to the lowest level. To remove some of these defects Lord Mayo's Government in 1870 took the first important step towards financial decentralisation. An attempt was made to make the Provincial Governments responsible for the management of their own Provinces. Each Provincial Government was given a fixed grant for the upkeep of definite services such as police, jails, education and the medical services, with powers, subject to certain conditions, to allocate as it thought best and also to provide for additional expenditure

by the exercise of economy, and, if necessary, by raising local taxes. The Government of India retained all the residuary revenues for its own needs.

This limited measure proved markedly successful and provided the justification for a further step taken during the time of Lord Lytton. In 1877, important heads of revenue such as stamp duties, alcoholic excise and income tax collected in the Provinces were provincialised, while the responsibility of the Provinces in regard to expenditure was extended to the departments of land revenue, general administration and law and justice. Fixed grants, however, from the centre continued, and in case of two Provinces, a definite proportion of land revenue was assigned in lieu of a fixed sum. For the first time there was the classification of revenue heads into central, provincial and divided. The growing needs of other Provinces were met by treating land revenue as one of the divided heads. Settlements on these lines were made with the Provinces for five years in 1882 and were renewed in 1887, 1892 and 1897.

In 1904, these settlements were made quasi-permanent. The revenues assigned to the Provinces were definitely fixed and were not subject to alteration by the Central Government save in case of extreme necessity. The Decentralisation Commission considered the question but did not propose any changes. In 1911 Lord Hardinge's Government made the settlement permanent. The fixed assignments to Provinces were reduced and the provincial shares of growing revenues were increased. The intervention of the Central Government in the preparation of the provincial budgets was curtailed. In distributing these revenues the respective needs of the Provinces were taken into

consideration, but it is rightly pointed out that in practice that Province came off best which was able to exercise the greatest pressure at Delhi or Simla.

To summarise the position before the Reforms of 1919: the revenue heads were classified as central, provincial, and divided. Customs, salt, opium, railways, posts and telegraphs, mint and tributes from native princes were central heads. Registration, police, education, law and justice, medical relief, minor irrigation, provincial civil works, were provincial heads. Land revenue, excise, income tax, stamps, forests, and major irrigation were divided heads. Receipts from the first went to the Central Government, from the second to the Provincial Governments, whilst those from the third were shared equally by the Central and the Provincial Governments. The Central Government was responsible for central expenditure and the Provincial Governments for provincial expenditure. The Provincial Governments had no independent power of taxation or of borrowing and there was a strict central budgetary control over the Provincial Governments.

FINANCIAL ARRANGEMENTS UNDER THE ACT OF 1919

The Montagu-Chelmsford report is an important document in the history of financial devolution in India. After reviewing the then existing financial system the joint authors pointed out how seriously it operated as an obstacle to provincial enfranchisement.

They laid down that financial devolution was a condition precedent to the introduction of a measure of responsibility in the Provinces. With this object they formulated a new basis of financial settlement to suit the wide measure of administrative and legislative

devolution. The scheme was based on the abolition of divided heads and on the securing of independent sources of revenue to the Centre and Provinces to meet their respective obligations. A clear-cut division of the revenue heads was made. Of the divided heads, income tax was made central, whilst stamps were classified as general and judicial, the former being made central and the latter provincial. This redistribution of the sources of revenue resulted in a deficit of ten crores in the central budget. Hence, as a transitional measure to maintain the existing relative financial position of the Centre and the Provinces, a system of contribution from each Province to the Centre was adopted. Such contributions were fixed on the estimated provincial surpluses resulting from the redistribution of the heads of revenue. To enlarge the taxing power of the Provincial Governments certain subjects of taxation were scheduled as reserved for Provinces. A committee

**MESTON AWARD** under Lord Meston was appointed to fix the contributions from the Provinces and to consider the claim of Bombay to a share of the proceeds of income tax. The Committee fixed the contribution for each Province. This was known as the Meston Award. The Joint Select Committee accepted the contributions fixed by the Award and recommended their total extinction within a few years. On the grounds of policy, Provinces were to be given some share in the increase of the revenue from income tax.

Hence under the Act of 1919 the most important sources of provincial revenues were, (1) receipts from irrigation, land revenue, forests, excise on alcoholic liquors and narcotics, stamps and minerals, (2) a share in the growth of revenue derived from income tax in

the Province so far as that growth is attributable to an increase in the amount of income assessed, (3) the proceeds of any taxes which may lawfully be imposed for provincial purposes. The provincial legislature was empowered to impose a new tax if it was included in the schedule. The sources of revenue of the Central Government were not specified as such in the Act. But the heads classified as central included customs, income tax, post and telegraphs, railways, the cultivation of opium and its sale for export, mint and tributes from native princes.

The residuary power of taxation remained with the Central Government.

The Provincial Governments were for the first time empowered to borrow loans for certain purposes and on certain conditions. The provincial accounts were separated and the budgetary control of the Central Government was relaxed.

This redistribution of the sources of revenue was severely criticised. It was pointed out that the Central Government took all the elastic sources with fixed expenditure while the Provincial Governments were given inelastic sources with growing expenditure. After protest from Bombay it was arranged that for every rupee of income assessed to the income tax over and above the income assessed in 1920-21 Bombay should receive three pies. As the datum of fifty crores assessed in 1920-21 was never exceeded the provision remained ineffective.

#### FINANCIAL DEVELOPMENTS SINCE THE REFORMS OF 1919

It was anticipated that the substantial initial surpluses which the Provinces were expected to get under the

new scheme would enable the ministers to develop the nation-building departments without resort to fresh taxation. However, circumstances rendered the realisation of these hopes impossible, and the expected surpluses turned out to be actual deficits, thus disabling the ministers from carrying out useful work in their departments. So far from there being any marked development of the nation-building services entrusted to ministers, expenditure on them at the end of 1923-24 was actually less than in 1921-22. The financial difficulties of the Central Government were equally great. In the first Budget of the Central Government under the Reformed Constitution taxes were increased and added, and it was hoped that this would result in a surplus while in fact it revealed a deficit of eighteen crores of rupees. Additional taxation was imposed in the following year and yet there was no balanced budget. When strict economy and retrenchment were practised on the recommendations of the Inchcape Committee financial equilibrium was restored, and the provincial contributions, which were gradually reduced, were abolished in 1927-28. After 1928, neither the Central Government nor the Provincial Governments were in a flourishing condition. The Statutory Commission appointed in 1928-29 was assisted in the part of its work relating to finance by Mr. W. T. Layton, who acted as financial assessor. He reviewed the financial position and the sources of revenue and the obligations of the Central and Provincial Governments. He pointed out that the expenditure in India on social and beneficent services was remarkably low whilst that on the defence services was remarkably high. Keeping this in mind he suggested a scientific scheme for the division of the sources of revenue between the Centre and the

Provinces on a federal basis. As the recommendations of the Simon Commission were not considered on their merits Mr. Layton's scheme was dropped. With the acceptance of the scheme of an All-India Federation the subject of the distribution of the sources of revenue was carefully considered by a sub-committee of the second Round Table Conference under Lord Peel. This committee laid down the general principles upon which the financial resources and obligations of India should be apportioned between the Federation, the British Indian Provinces and the States. The Peel Committee laid down that the federal sources of revenue should be largely confined to indirect taxes, but it stated that as indirect taxes alone were found to be inadequate for federal needs in other federations, the Federation should have some portion of direct taxes also. This committee left the question of details to be decided by another committee. In 1932 the Facts-Finding Committee, under Lord Percy, examined the details in the light of the principles laid down by the Peel Committee. The provision for the assignment of the revenue heads under the New Constitution is based on the findings of these committees.

## II. The Problem of Federal Finance

Financial stability: the creation and operation of the Reserve Bank, the balancing of the Budget, the provision of adequate reserves and the attainment of a favourable trade balance were laid down as the conditions requisite to the inauguration of the Federation. Most of these conditions were more or less fulfilled by the end of 1935. However, the problem of federal finance, namely the distribution of the sources

of revenue between the Federal Government and the federating units presented great difficulty, though British India was already on a basis which was similar to that of a federation. The problem may be stated in a few words. The revenues of the Central and the Provincial Governments have considerably fallen during recent years. Some of the new Provinces are likely to remain deficit Provinces. Their revenues will be inadequate to meet their normal requirements, hence they will have to be subsidised by subventions, or grants from the Central Government. The separation of Burma will result in a loss of certain revenue to the Central Government. The inauguration of the New Constitution requires an additional expenditure of a crore and a half of rupees. The necessity of maintaining the stability of central finances can hardly be exaggerated. The Central Government has expansive sources of revenue whilst its expenditure is of a fixed character. The Provincial Governments have inelastic sources of revenue whilst their expenditure is growing. The desirability of increasing provincial expenditure especially on social services is conceded. Thus the problem of federal finance is to distribute the sources of revenue in such a manner as to secure the financial stability of the Centre and also to secure to the Provinces adequate revenues for their growing needs. It is to be noted that the stability of the central finances has been the paramount consideration in framing the scheme which is embodied in the New Constitution.

The Constitution only draws an outline of the scheme and the details are filled in by Order in Council made on July 3, 1936, on the report of Sir Otto Niemeyer, who was appointed to examine the financial position of the Central and Provincial Governments with a view to

ascertaining whether the New Constitution could be safely launched from the financial point of view. He definitely stated that the financial position of the Central and the Provincial Governments was satisfactory enough to justify the inauguration of the New Constitution.

#### FEDERAL FINANCE

The sources of revenue are classified as federal and provincial in separate lists. These lists are exhaustive and the power of taxation over the residuary sources is with the Governor-General, who may in his discretion assign any source not included in either list either to the Federal or to the Provincial Governments.

#### THE FEDERAL LIST

The taxes which are levied and collected by the Federation are, (1) duties in respect of succession to property other than agricultural land, such stamp duties as are mentioned in the federal legislative list (on bills of exchange, cheques, promissory notes, bills of lading, letters of credit, insurance policies, proxies and receipts), terminal taxes on goods or passengers carried by railways or air, taxes on railway fares and freights. (2) Income tax (except corporation tax). But a proportion of net yield which is fixed at 50 per cent is payable to the Provinces and States, if any, in which the tax is leviable. This original proportion of 50 per cent cannot be increased. But the Federation may impose and retain the whole of the proceeds of a surcharge. As the financial position of the Federation does not permit the sharing of income tax immediately, the Federation is to retain for the first period of five years, in each year, the whole or such amount as together with any

general budget receipts from railways will bring the Central Government's share in the divisible total up to thirteen crores, whichever is less, and for a second period of five years, also in each year, it is to retain a definite proportion fixed by Sir Otto Niemeyer. Of the 50 per cent share of income tax assigned to the Provinces, its distribution among the Provinces whenever it is to be made should be as follows: Madras 15 per cent, Bombay 20, Bengal 20, United Provinces 15, the Punjab 8, Bihar 10, the Central Provinces 5, Assam 2, the North-West Frontier Province 1, Orissa 2 and Sind 2. It is to be noted that this provision for the assignment of 50 per cent of income tax is only a paper provision for the first five years, and even for the next five years its execution is dependent upon the recovery of railway receipts and the satisfactory condition of central finances.

(3) The corporation tax, which is a tax on corporations and which is clearly defined. It is not to be levied in the States until ten years after federation, and a ruler may demand that instead of levying the tax a contribution shall be payable equivalent to the net proceeds which a tax would yield in his State. The Auditor-General is to be supplied with the necessary information by the States to enable him to calculate the tax, and the Federal Court is given final authority to determine in any year a claim by a ruler that the sum fixed is excessive.

(4) Salt duties, federal excise duties and export duties. But the whole or part of the proceeds may be distributed to the Provinces and the States. In the case of export duties on jute, 62½ per cent of net proceeds is assigned to the Provinces exporting jute in proportion to the crops grown therein. The prior sanction of the Governor-General in his

discretion is required for the introduction of all bills varying any tax or duty in which the Provinces are interested. (5) Customs duties, taxes on capital value of the assets, exclusive of agricultural land, of individuals and companies, and taxes on the capital of companies.

As regards other sources of federal taxation no conditions are imposed by law.

The central revenues are charged with the following grants to the Provinces:

- |                                     |   |
|-------------------------------------|---|
| 1. The United Provinces.            | 25 lakhs of rupees in each year for five years.   |
| 2. Assam.                           | 30 lakhs of rupees in each year.  |
| 3. The North-West Frontier Province | 100 lakhs of rupees in each year.   |
| 4. Orissa.                          | In the first year, 47 lakhs of rupees, in each of the next four succeeding years 43 lakhs, and in every subsequent year 40 lakhs of rupees. |
| 5. Sind.                            | In the first year 110 lakhs of rupees, progressively reducing it at the end of 45 years to 55 lakhs of rupees.                              |

#### THE PROVINCIAL LIST

The provincial sources of revenue, in addition to the share in the income tax, grants from the central revenue and a share in the export duty on jute in certain provinces are: (1) land revenue, taxes on land and buildings, hearths and windows: (2) taxes on agricultural income and duties in respect of succession of agricultural land: (3) excise duty on goods manufactured or produced in the Province and countervailing duties on goods produced

or manufactured elsewhere in India, being alcoholic liquor for human consumption, opium, Indian hemp and other narcotic drugs and narcotics, non-narcotic drugs, medicinal and toilet preparations: (4) taxes on mineral rights, capitation taxes: (5) taxes on professions, taxes on callings and employments: (6) taxes on animals, boats, the sale of goods, advertisements, on luxuries, including entertainments, amusements, betting and gambling: (7) cesses on the entry of goods into local areas, dues on passengers and goods, carrying on inland waterways, tolls: (8) stamp duties in respect of the documents not included in the federal list.

REMISSION TO  
THE STATES

The Central Government at present receives certain tributes from the States. This is altered. The Federation is to receive all payments, whether cash or contribution or in respect of loans due from the States, and will provide the representative of the Crown with any sums which he deems necessary for the performance of his duties towards the States. As regards States which enter the Federation, the Crown may remit over a period not exceeding twenty years cash contributions payable and may direct the payment to any State of such sum as it thinks fit, if the State has in the past ceded territory in lieu of services to be rendered by it. But neither remission nor payment may begin before the Provinces have begun to receive payments out of the federal income tax receipts. Account must be taken in fixing the amount to be remitted or paid of any privilege or immunity enjoyed by the State. Every Instrument of Accession contains the necessary particulars to enable the Crown to determine these questions.

The property of the Federation is exempted from any provincial or State taxation. Both Federation and Provinces are under obligation to supply the Secretary of State with funds to meet any payments due to be made in respect of Federation or Provinces and especially to enable the Secretary of State and the High Commissioner to pay pensions.

Neither the Federation nor the Provinces can burden their respective revenues except for the purposes of India or some part thereof.

#### THE RESERVE BANK OF INDIA

In order to secure financial stability it was recognised that adequate provision must be made to ensure that control of currency and credit, including the issue of bank-notes and maintenance of reserves, must be entrusted to an independent body like a Reserve Bank. Hence the establishment of a Reserve Bank of India was made a condition precedent to the introduction of the New Constitution. The Reserve Bank of India Act was passed in 1934 and the Bank started operations in 1935. The capital of the Bank is five crores of rupees divided into hundred rupee fully paid up shares. The central Board of Directors of the Bank is composed of the Governor and two Deputy-Governors appointed by the Governor-General, four directors nominated by the same authority, eight elected directors, and a Government official nominated by the Central Government. The Governor-General is to exercise his discretion in the appointment and removal of the Governor and Deputy-Governors, the fixing of their salaries and terms of office, the appointment of an officiating Governor or Deputy-Governor, the supersession of the central Board and action

consequent thereon, and the liquidation of the Bank. In nominating directors he is to act on his individual judgment. No Bill affecting currency or coinage or the constitution or functions of the Reserve Bank may be introduced save with the sanction of the Governor-General given in his discretion.

#### POWERS OF BORROWING

Both the Federation and the Provinces have the power of borrowing the amount fixed by the Act. The Federation may make loans to the Provinces or guarantee their loans. No Province may borrow outside India without the assent of the Federal Government, and such assent is also requisite for borrowing if there is outstanding any part of a central or federal loan or loan guaranteed by the Central Government or Federation. The refusal of assent to borrowing, or to make a loan, or to guarantee a loan, or the reasonableness of conditions imposed in any of these cases, is in case of disputes to be determined by the Governor-General in his discretion.

#### ACCOUNT AND AUDIT

To assure regularity of accounting of the public revenues the Governor-General and the Governors are given powers to make rules for the purpose. The King appoints an Auditor-General whose status is that of a federal judge as regards security of tenure. The conditions of his appointment cannot be varied as long as he is in office. He is debarred from further office under the Crown in India. His duties are prescribed. He may act for a Province. A provincial legislature not earlier than two years after federation may provide for the appointment on similar terms

of a provincial Auditor-General; but the post must not be filled for at least three years after the date of the Act. The Auditor-General gives directions as to the mode of keeping accounts. His reports are to be laid before the federal and provincial legislatures, as the case may be. For the accounts of the Federation in the United Kingdom an auditor of home accounts on similar terms is appointed. Payments in respect of the relations of the Crown and the States are to be audited by the Auditor-General. The office of the Auditor-General is made independent of the executive authority.

#### CONCLUSION

The basis of federal finance under the New Constitution is in no way different from that under the Act of 1919. The distribution of the sources of revenue has remained practically the same, only the lists of the federal and provincial sources of revenue are exhaustively set out. The real criticism of the financial arrangements under the Act of 1919 was that the Central Government had kept to itself all expansive sources whilst the Provincial Governments were given non-expansive or inelastic sources of revenue. It was further pointed out that, admitting the necessity of a strong Central Government with financial stability, the requirements of the Central Government had received over-riding consideration. The crux of the financial problem of India is how to secure more funds for the Provinces either by assigning to them a share of the central taxes or by allocating to them growing sources of revenue. This fundamental problem of Indian finance has remained unsolved. It was expected that the Provinces would be given a substantial share of income tax from the very beginning, but this hope

is to remain unfulfilled for ten years. Sir Otto Niemeyer in his report clearly states: "Expenditure at the centre cannot be expected, consistently with safety, to decrease much below the point to which it has now been reduced. . . . Expenditure in the Provinces could obviously be increased with advantage on many heads." Thus the Provinces, which admittedly require more funds, cannot expect any relief from the Central Government which has no surplus to spare. There is every possibility of an increase in the central revenues, but it will not bring immediate relief to the Provinces. It is not unlikely that the provincial revenues may actually decrease, thus intensifying the problem. The entry of the States into the Federation has brought no additional financial strength. For all practical purposes from the financial point of view the New Constitution has given neither relief nor added strength to the Provinces. On the contrary it has imposed on them an additional burden of nearly a crore of rupees incidental to the inauguration of the New Constitution.

### III. The Existing Financial System

With the inauguration of provincial autonomy on April 1, 1937, the financial system of India will be recast and it is difficult to deal with all the sources of federal and provincial revenues in detail. However, a brief description of the existing arrangements may be given by way of providing a general idea of the system.

AT THE  
CENTRE

The main sources of income of the Central Government are customs, income tax, salt duties, opium, railways and posts and telegraphs. We may also mention mint and tributes from native Princes.

A great part of the central expenditure is on defence. The following are the figures under the principal heads of central revenues and expenditure for the year 1935-36 :

<i>Revenues (in lakhs of rupees).</i>		<i>Expenditure (in lakhs of rupees).</i>	
Customs	54,71	Defence (Net)	50,06
Income tax	16,80	Debt charges	13,62
Salt	8,70	Civil administration	10,46
Opium	61	Other items	50,23
Railways			
Posts and telegraphs	85		
Currency and Mint	1,22		
Other receipts	41,48		
	<hr/>		<hr/>
Total	124,37	Total	124,37
	<hr/>		<hr/>

**CUSTOMS REVENUE** Customs duties, which bring in fifty-five crores of rupees, include export duties as well as import duties on goods exported and imported. The export duties are levied on jute, which is an Indian monopoly, on rice, hides and skins. Before the Mutiny the general rate of import duties was  $3\frac{1}{2}$  per cent on raw produce and  $3\frac{1}{2}$  to 5 per cent on manufactured goods. On goods imported from countries other than the United Kingdom the duties were double. After 1858, the general rate was raised to  $7\frac{1}{2}$  per cent but the duty on cotton goods remained at 5 per cent. The controversy regarding the cotton duties led to the abolition in 1882 of all import duties except on arms and liquors. In 1894, a 5 per cent duty was imposed in the interest of revenue on imports into India. Till the outbreak of the War customs duties did not play a very important part in Indian revenues and yielded only some eleven crores of rupees. During the War the customs duties were greatly increased and to-day they are the most

important source of revenue and yield the highest amount in the central budget. The general tariff rate is 25 per cent ad valorem and in some cases more, with preferential rates on goods of the United Kingdom and the British Colonies.

A fiscal commission was appointed in 1922 to examine the tariff policy of the Government of India. The commission recommended that the Government of India should definitely adopt a policy of protection to be applied with discrimination on certain lines indicated in the report. Protection was to be given if a Tariff Board, which was to be constituted for the purpose, was satisfied that the industry claiming protection possessed natural advantages and that it was not likely to develop without the help of protection and that it would eventually be able to face world competition unprotected. The Tariff Board consisting of three members has examined claims of many industries and has recommended discriminating protection for some of them. The Indian tariff is partly protective and mostly revenue. It is believed that it is fairly high as a revenue tariff and fairly low as a protective tariff.

#### INCOME TAX

The income tax was first imposed by Mr. Wilson in 1860 on all incomes above a certain minimum. Since 1886 agricultural incomes are exempt from income tax. The tax was levied at a very low flat rate before the War. During the War it was increased. The present income tax is a graduated tax levied on non-agricultural incomes exceeding Rs. 2,000 and there is in addition a super-tax on incomes exceeding Rs. 30,000. No deductions are allowed for families and children. It is a growing source and is likely to yield more with the revival of prosperity.

**SALT** The salt tax was one of the taxes transferred to the Company with the *divani* of Bengal in 1765. At first it was administered as a revenue monopoly. Monopoly was subsequently abolished and a system of licence was substituted. The Government manufactures a large quantity of salt. The rate of the duty has varied from time to time. In 1888 the rate was raised from Rs. 2 a maund, but in 1903 it was reduced to Rs. 2 and in 1907 to Rupee 1. The rate was again raised to Rs. 1-4-0 a maund and in 1923 to Rs. 2-8-0. It was again reduced in 1924 to Rs. 1-4-0. It is interesting to note that whenever the duty was reduced the consumption increased.

**OPIMUM** Opium is the monopoly of the Government, which controls its production as well as its distribution. Cultivation of the poppy plant is prohibited except in licensed areas, and licence is required to sell the whole of the production to the Government at a fixed price. The opium is made up in a Government factory and is supplied at very nearly cost price to the Provincial Governments, who sell it to consumers through licensed vendors. The bulk of the central revenue is derived from exports. This part of the revenue will soon be extinguished as Government has undertaken to stop export to foreign countries.

**RAILWAYS** Most of the railways in India are owned by the Government. The total capital outlay on State railways is 757 crores of rupees. The administrative control of this organisation is centralised under a Railway Board. Under an arrangement sanctioned in 1920 railway finances were separated from general finances. Under the Convention the railways con-

tribute a definite sum to the general budget, i.e., 1 per cent of the capital outlay and a proportion generally one-fifth of the net surplus profits. During recent years railways have not been able to make any contribution.

POSTS AND  
TELEGRAPHS

These are run on business principles. Recently they have been able to contribute something to the general budget. As their object is to supply services to the people at the cheapest possible rate they are not looked upon as sources of revenue, though Government does raise some revenue from them.

CURRENCY  
AND MINT

Since the establishment of the Reserve Bank of India this source of revenue has lost its importance.

TRIBUTES FROM  
NATIVE PRINCES

Under treaties various States pay certain sums to the Government of India for various considerations. This source of revenue will diminish and finally disappear under the Federation.

EXPENDITURE OF THE CENTRAL GOVERNMENT

ARMY The most important item of central expenditure is defence, which absorbs 50 crores of rupees.

DEBT  
CHARGES

The next important item of expenditure is the interest on the Public Debt of India which is nearly 14 crores of rupees.

The Public Debt of India on March 31, 1936, was 1,209 crores of rupees; of this 83½ per cent was productive and 16½ per cent was unproductive.<sup>1</sup> A productive

<sup>1</sup> The distinction between productive and unproductive debt in India is not strictly accurate.

debt is that which is incurred for the construction of railways, irrigation works, etc., from which sufficient receipts are obtained to pay the debt charges and to provide the sinking fund. This portion of the debt does not constitute a direct burden on the taxpayers. Unproductive debt is that which is incurred for the purposes of war or to make good the deficit in the ordinary expenditure. There is no receipt from it. Of 1,209 crores, 503 crores is in England (Sterling Debt) while the remainder is in India (Rupee Debt).

**CIVIL ADMINISTRATION** This item absorbs nearly 11 crores of rupees. It includes the expenditure in connection with the Government of India's direct administration of five out of six minor provinces. The expenses of the Foreign and Political departments also fall under this head.

These are the main items of central expenditure.

**HOME CHARGES** Every year the Government of India has to spend a certain amount in England and these charges are known as Home charges. Indian revenue is collected in rupees and expenditure in England is in sterling. The method by which this amount is remitted is noteworthy. Indian exports generally exceed the imports, and this involves a debt to India by the outside world which is liquidated by the purchase of bills on India by London merchants from the Secretary of State. These bills are paid out of the Indian revenues. The Secretary of State receives the equivalent in sterling. This amount is nearly 40 crores of rupees and it comprises the expenditure of the India Office, interest on Sterling Debt, payment for the purchase for stores, pensions and allowances of

British officials, Army charges and annuities on railway companies.

**PROVINCIAL REVENUE AND EXPENDITURE** The system of provincial finance and the heads of revenue and expenditure in all Provinces are the same. Hence it is enough to give a specimen statement. The following are the estimated figures of revenue and expenditure of the Government of Bombay for the year 1936-37:—

<i>Revenue (in lakhs of rupees).</i>		<i>Expenditure (in lakhs of rupees).</i>	
Land revenue	3,45	Land revenue and general administration	1,23
Excise	3,30	Police	1,40
Stamps	1,37	Jails and Justice	77
Irrigation (net)	19	Other reserved expenditure (including debt charges and pensions)	1,62
Forests (gross)	47	Education	1,60
Other sources	5,32	Medical relief and public health	62
		Civil works	1,18
		Other expenditure	5,68
Total	<u>14,10</u>	Total	<u>14,10</u>

## REVENUE

**LAND REVENUE** The subject of land revenue is dealt with in a later chapter. It is the main source of revenue of the Provinces. In most Provinces it is still levied by executive action, but during recent years attempts have been made to bring it within the purview of the legislature.

**EXCISE** This item of the revenue is raised from licences, fees and duties levied on the sale of intoxicating liquors and drugs (all of local manufacture).

**STAMPS** Stamp revenue is derived from two sources. Stamps are placed on commercial documents. Fees are paid by the use of stamps in Law Courts. Both these sources constitute the Stamp Revenue.

**IRRIGATION** Areas which are irrigated by irrigation works are assessed for irrigation rates in addition to land revenue. The rate depends upon the quantity of water used and the nature of crops raised.

**FORESTS** Forests are a monopoly of the Government. At stated periods the Government sells the right of cutting forest by public auction, and the receipts constitute the forest revenue.

**OTHER SOURCES** We may mention under this head the entertainment tax which has been recently imposed.

**EXPENDITURE** The main expenditure of the Provincial Government is on general administration, police and jails. Education claims nearly 12 per cent of the total expenditure while the expenditure on medical relief is very small. The expenditure on social or beneficent services which go to the building up of the nation is remarkably low. In the words of Mr. W. T. Layton: "Her (India's) expenditure on social services such as education, health, sanitation, etc., is far behind Western standards, and indeed in many directions is almost non-existent."

#### IV. The Federal Railway Authority

To secure the working of railways on business principles, and to free their management from political and governmental pressure, the administration of railways under the New Constitution is vested in a separate corporate statutory body whose relation with the Government and legislature is governed by the Government of India Act, 1935. Under this Act the executive authority of the Federation in respect of the regulation and the constitution, maintenance and operation of railways is to be exercised by the Federal Railway Authority, consisting of seven persons. Not less than three-sevenths of the members and the President are appointed by the Governor-General in his discretion. A member of the Authority must have had experience in commerce, industry, agriculture, finance, or administration, or he is or has been within the previous twelve months a member of the Federal or Provincial Legislature, or in the service of the Crown in India, or a railway official in India. Its members hold office normally for five years, and may be reappointed for like periods. The Governor-General controls their conditions of service and tenure of office. All acts and all questions are done and decided by a majority of the members present and voting. In the case of an equality of votes, the President has a second or casting vote. The Governor-General may depute a person to attend and speak at the meeting of the Authority, but he has no right to vote. At the head of the executive staff of the Authority is the Chief Railway Commissioner appointed by the Governor-General in his individual judgment, after consultation with the Authority. The

Chief Commissioner is assisted by a Financial Commissioner appointed by the Governor-General. The Chief Commissioner can only be removed by the Authority with the approval of the Governor-General in his individual judgment, and the Financial Commissioner can only be removed by the Governor-General in his individual judgment. These officers have the right to attend the meeting of the Authority. The Authority in discharging its functions must act on business principles, with due regard to the interest of agriculture, industry, commerce and the public, and must take care to meet out of revenue the expenditure charged thereon. The Federation may give directions on policy. Whether a question is or is not a question of policy is to be decided by the Governor-General in his discretion. The Governor-General has the right to give directions to the Authority on matters affecting his special responsibility or matters in which he has to act in his discretion or individual judgment. He may make rules respecting relations between the Authority and the Government regarding railway finance and other cognate matters, and also to secure that any matters affecting his responsibility are brought to his notice.

The land to be acquired compulsorily for railways is to be acquired by the Government. The Authority being a body corporate can sue and be sued in place of the Government in respect of its contracts and has all the rights of a competent contracting party. Provision is made for a railway fund to which receipts are to be paid and for the meeting of expenditure of various kinds from it; any surplus is to be shared with the Government on the existing basis or according to a new scheme which may be prepared. The Authority is to be debited on capital account with the total

expenditure and to pay interest thereon as well as to repay capital. Its accounts shall be audited by the Auditor-General of India.

Provision is made for the appointment of a railway rates committee to advise the Governor-General in case of complaints by users against the rates fixed by the Authority. The Federation and the Federated States have to afford facilities for through traffic on the railways for which they are responsible. No system is to receive unfair discrimination by undue preference or otherwise. Unfair or uneconomic competition is forbidden. Provision is also made for the appointment of a railway tribunal to decide any complaints relating to traffic, rates, or construction of railways between the Authority and the Federated States. The tribunal is presided over by a judge of the Federal Court chosen after consultation with the Chief Justice of India and holding office for five years, and is to include two other members, chosen by the Governor-General in each case from a panel of eight appointed by him, being persons of administrative, railway or business experience. The tribunal alone has jurisdiction in such cases and is subject on a point of law to appeal to the Federal Court, whence no appeal lies.

## CHAPTER XI

### THE JUDICATURE

#### I. The Federal Judicature

A federation postulates an agreement and distribution of legislative, executive and judicial authority between the Federation and the federating units. Disputes as regards the construction or the interpretation of the Constitution and the respective rights of the Federation and the units or of the units *inter se* are common in all federations; hence there is an indispensable necessity of a Federal Court in a federation, either to interpret the Constitution or to decide the disputes. Hence a Federal Court, an essential element in a federal constitution, is at once the interpreter and guardian of the Constitution and a tribunal for the determination of the disputes between the units of federation.

There is no central court for the whole of British India. The High Court of a Province is the highest judicial tribunal in the country, and appeals from High Courts in certain cases lie to the Privy Council in London. Indian opinion favoured the creation of a supreme court both as a federal court and a court of appeal from provincial High Courts, but this demand was rejected by Parliament. The New Constitution provides for the establishment of a Federal Court which is empowered to extend its jurisdiction by a Federal Act to hear appeals from High Courts, thus

conferring upon it two distinct jurisdictions : (1) to hear federal issues and (2) to hear appeals.

### THE FEDERAL COURT

The Federal Court shall consist of a Chief Justice of India and such number of puisne judges as His Majesty deems necessary.<sup>1</sup> The number of puisne judges is not to exceed six, unless an address is presented by the federal legislature for an increase. Judges are appointed by His Majesty and remain in office until 65 years of age. They hold office during good behaviour. A judge may resign or may be removed by His Majesty on the ground of misbehaviour or of mental or bodily infirmity, if the Privy Council on a reference reports that he ought to be removed on any such grounds. A judge must have been for at least five years a judge of a High Court in British India or a Federated State, or a barrister of England or Northern Ireland of ten years' standing, or an advocate of Scotland of twelve years' standing, or a pleader of ten years' standing in a High Court or Courts of British India or a Federated State. The Chief Justice must be, or must have been when first appointed a judge, a barrister, or an advocate of Scotland, or a pleader, and must have fifteen years' standing. A civilian judge cannot be a Chief Justice. The Governor-General has no power of suspending a federal judge, nor has the legislature power to present an address praying for the removal or supersession of a federal judge. Judges before they enter office have to take the judicial oath of loyalty or allegiance. Their salaries,

<sup>1</sup> The Federal Court of India consisting of the Chief Justice and two other judges is constituted. It will begin its work from October 1, 1937.

allowances, terms of leave and pensions are fixed by His Majesty in Council, and, except for allowances, they are not to be varied to their disadvantage after their appointment. During the vacancy in the office of the Chief Justice, the Governor-General in his discretion may appoint any of the judges, including civilian judges, to the post.

The Federal Court shall sit at Delhi or at such other place as the Chief Justice may, with the approval of the Governor-General, appoint.

#### ORIGINAL JURISDICTION OF THE FEDERAL COURT

The Federal Court has exclusive jurisdiction in any dispute between the Federation, any of the Provinces or any of the Federated States which involves any question on which a legal right depends. A dispute to which a State is a party must concern the interpretation of the Act or Order in Council thereunder or executive authority vested in the Federation by the Instrument of Accession.

Judgments of the Federal Court are only declaratory.

#### APPELLATE JURISDICTION

The Federal Court has also appellate jurisdiction in appeals from High Courts in British India in certain cases. In every case in British India it shall be the duty of the High Court to consider whether it involves a substantial question as to the interpretation of the Act or Order in Council and to give of its own motion a certificate. If such a certificate is given, any party may appeal to the Federal Court on the ground that the question was wrongly decided. In such cases direct appeal with or without special leave to the Privy Council is not allowed.

### POWER OF FEDERAL LEGISLATURE TO ENLARGE APPELLATE JURISDICTION

The federal legislature, with the previous sanction of the Governor-General in his discretion, may provide for appeals from High Courts in British India to the Federal Court in civil cases whose subject-matter exceeds a certain amount. If the federal legislature makes such a provision, provision will also be made for the abolition in whole or in part of direct appeals in civil cases from High Courts to the Privy Council.

Appeals from the State High Courts may be brought to the Federal Court on a question of the interpretation of the Act or Order in Council or the extent of the legislative or executive authority of the Federation. Such appeals shall be by way either of cases stated by the State High Courts for the opinion of the Federal Court or cases required to be stated by the Federal Court.

Appeal lies to His Majesty in Council without leave from any judgment of the Federal Court in its original jurisdiction on disputes concerning the interpretation of the Act or Order in Council or the extent of the legislative and executive authority of the Federation under Instrument of Accession or agreement as regards the administration of federal law by the State.

All authority, civil and judicial, throughout the Federation shall act in aid of the Federal Court in the execution of its orders. Its orders are enforced both in British India as well as in the States. The law declared by the Federal Court or the Privy Council shall bind all Courts in British India and also the State Courts.

The Governor-General may in his discretion obtain

the opinion of the court on a question of law of public importance, already arisen or likely to arise, and the court may, after hearing, report its opinion. This opinion has not a binding force.

The court may, with the approval of the Governor-General, make rules regulating the practice and procedure and also as to the practitioners, appeals, costs and fees. No cause is to be decided by less than three judges. Judgments shall be delivered in open court with the concurrence of the authority of the judges present at the hearing. A dissenting judge may deliver a dissenting judgment.

All proceedings in the Federal Court are to be in the English language.

The administrative expenses of the court are charged on the federal revenue, and fees or other moneys taken by it form part of federal revenues.

## II. Provincial Judiciary

“By the creation of a just administration and an upright judiciary, British rule has secured to every subject of His Majesty the right to go in peace about his daily work and to retain for his own use the fruit of his labours.”

J. S. C. REPORT.

### PROVINCIAL JUDICIARY

**HISTORICAL** The early Charters of the Company conferred judicial authority upon the Governor and Council of the several factories for the trial of persons belonging to the Company and living under them. In 1726 a Mayor's Court was established for this purpose at each of the three Presidencies of Calcutta, Madras and Bombay, with the right of appeal to the Governor and Council and in certain cases to the King in Council. The Governor

and Council were also constituted courts for the trial of all offences except high treason. There were, side by side with these, native courts. The native system of government was based upon the union of all authority, judicial, fiscal and military, in the same hands. At the head was the Nawab-Deputy of the Delhi Emperor who was both a Diwan and a Nizam. As Diwan he collected the revenue and superintended the administration of civil justice. As Nizam he exercised criminal jurisdiction and controlled the police. Under the Nawab, the zamindars exercised civil and criminal jurisdiction. The criminal law administered was the Muhammadan law. The civil law was Hindu or Muhammadan as the case required. With the acquisition of *divani* from the Mogul Emperor in 1765 Clive introduced a dual system. The Nawab of Bengal continued to administer criminal justice in accordance with the Muhammadan law. The administration of civil justice and the collection of revenue were undertaken by the Company but were still carried out by Indian judges. This dual system proved a miserable failure. In 1771, the Company "stood forth as Diwan", and Warren Hastings, who was appointed Governor of Bengal, devised a scheme which placed the entire administration of justice as well as the collection of revenues under the supervision of English officers. Each district was placed in charge of a collector assisted by a native diwan. The collector and the diwan constituted a court of civil justice called the Divani Adalat, from which an appeal lay to the Sadar Divani Adalat at Calcutta, composed of the Governor and Council, also assisted by native officers. A criminal court or Fozdari Adalat was likewise established for each district, consisting of a kazi, a mufti and two

moulvis with whom the collector sat simply to watch the proceedings. From this court an appeal lay to the Sadar Nizamat Adalat. This court was also under the supervision of Governor and Council.

The Regulating Act, 1773, which conferred legislative authority on the Governor-General and Council, also constituted the Supreme Court of Judicature in Bengal, composed of a Chief Justice and four puisne judges, all nominated by the Crown. It was intended to become the general supervisor of justice throughout Bengal, but the vague nature of its powers led immediately to difficulties with the executive authority of the Governor-General and Council and the native revenue officers. The dispute was settled by Parliament by an Amending Act which declared among other things that the Supreme Court had no jurisdiction over the Governor-General in his public capacity.

In 1774 the collectors were withdrawn and Native Amils were appointed in their place for the administration of civil justice; the superintendence of revenues being entrusted first to provincial courts and afterwards to a committee of revenues. In 1780 sixteen courts of Divani Adalat were created, each under the charge of a covenanted civilian styled the superintendent. In 1781 the provincial courts of the Company received express recognition from Parliament. The Governor-General and Council was constituted the highest court of appeal with an ultimate appeal to the King in Council in cases exceeding £5,000 in value.

#### REFORMS OF LORD CORNWALLIS

Lord Cornwallis introduced considerable changes in the judicial system. In 1790 the Sadar Nizamat Adalat was reconstituted so as to consist of the

Governor-General and Council, together with the kazi and two muftis. In 1793 ordinary criminal jurisdiction was entrusted to four courts of circuits, each composed of two or three covenanted civilians with native assessors. As regards civil justice the duties of collectors were separated from those of the magistrates. Twenty-six civil judges were appointed, each with a Hindu and Muhammadan assessor. From them appeals lay to four provincial courts, which were identical with four courts of circuit, and finally to the Sadar Divani Adalat, consisting of the Governor-General and Council. These civil judges were also constituted magistrates to hold preliminary inquiries in important criminal cases.

Under the Marquis of Wellesley the two appellate courts, Sadar Nizamat Adalat and Sadar Divani Adalat, were reconstituted. Instead of consisting of the Governor-General and Council they were composed of three or more judges selected from the covenanted service, and thus they remained until merged in the High Courts in 1862. The ordinary courts of justice were constituted in their present form by Lord William Bentinck. The provincial courts of appeal in civil cases were abolished. Full criminal jurisdiction was conferred upon the civil district judges, and the magisterial authority formerly exercised by the civil judges was transferred to the collectors, thus combining the executive and judicial functions in one person, which continues to this day. Lord Cornwallis established inferior civil courts of native commissioners outside the Presidency towns with graded jurisdiction. Lord William Bentinck instituted a new class known as principal sadar amils, who subsequently came to be known as subordinate judges.

### THE INDIAN HIGH COURTS ACT OF 1862

In 1862 the Indian High Courts Act was passed. It established High Courts at Calcutta, Madras and Bombay in which the Supreme Courts as well as the Sadar Divani Adalat and the Sadar Nizamat Adalat were merged. Under the same Act a High Court was established at Allahabad in 1866. Under the Indian High Courts Act of 1911, High Courts were constituted at Patna and Lahore. A chief court was established at Oudh and judicial commissioners' courts were constituted in the Central Provinces, the North-West Frontier Province and Sind. Thus the whole of British India before the Act of 1935 was under the jurisdiction of either Chartered High Courts or other courts with more or less similar powers. There was no supreme or central court for the whole of British India. A High Court or a similar court is the supreme judicial tribunal in a Province, from which in certain cases ultimate appeals lie to the Privy Council in London.

### PRESENT ORGANISATION OF JUSTICE IN PROVINCES

The High Courts of Calcutta, Madras, Bombay, Allahabad, Lahore and Nagpur; the Chief Court in Oudh; the Judicial Commissioners' Courts in the North-West Frontier Province and in Sind; and any other court constituted or reconstituted as a High Court, or any other comparable court in British India declared to be a High Court by the Crown, are given the status of High Court by the Government of India Act, 1935.

**COMPOSITION** Every High Court consists of a Chief Justice and such other judges as the Crown thinks

it necessary, but their number, including additional judges, should not exceed the maximum fixed by His Majesty in Council. Judges are appointed by the Crown under the Royal Sign Manual and they hold office until they attain the age of sixty. A judge may resign or may be removed by the Crown on the ground of misbehaviour or mental or bodily infirmity, if the Privy Council, on a reference from the Crown, reports that he ought to be removed on such a ground. A judge must be a barrister of England or Northern Ireland or an advocate of Scotland of at least ten years' standing; or a member of the Indian Civil Service of at least ten years' standing who has for at least three years served as, or exercised the powers of, a district judge; or have held for at least five years a judicial post not inferior to that of a subordinate judge or a judge of a Small Causes Court; or be a pleader of any High Court or Courts of at least ten years' standing. The Chief Justice of a High Court constituted by Letters Patent must be, or have been when first appointed to a judicial post, a barrister or an advocate or pleader or must have served for not less than three years as a judge of a High Court. The old statutory requirement that one-third of the judges should be barristers and one-third members of the Indian Civil Service is abolished. Indian public opinion demanded the exclusion of civilians from appointment as High Court judges. As the civilian judges are considered necessary for the present to maintain the strength and efficiency of the judiciary, the Indian demand was not conceded. Under the old Act neither a civilian judge nor a non-barrister judge was entitled to hold the permanent post of Chief Justice. Indian public opinion demanded the removal of this disability in the case of non-barrister

judges. The new Act removes this disability in the case of both non-barrister and civilian judges.

Judges of High Courts have to take the judicial oath. Their salaries, allowances, leave and pensions are fixed by His Majesty in Council, and (except for the allowances) shall not be varied to their disadvantage after their appointment. A temporary vacancy in the office of the Chief Justice is filled by the Governor-General in his discretion from the judges, and other vacancies are filled by him in his discretion from qualified persons. When there is pressure of work the Governor-General appoints any additional judges within the prescribed maximum number for two years.

**JURISDICTION  
AND POWERS  
OF HIGH  
COURT**

The High Courts of Calcutta, Bombay and Madras have both original and appellate jurisdiction while other High Courts have mostly appellate jurisdiction. They have jurisdiction in all matters civil and criminal and also in matters connected with wills, bankruptcy, admiralty, and in cases of Christians and Parsis and of Hindus married under the Civil Marriage Act or Special Marriage Act, also of divorce. They have no original jurisdiction concerning the revenue or its collection so long as it is done in accordance with the usage and practice of the law in force. The High Courts have superintendence over all courts in India subject to their appellate jurisdiction and may call for returns and issue general rules and forms of practice and proceedings. In all cases heard in the inferior courts the evidence is recorded and submitted when required to the High Court, which is enabled to revise, if necessary, the proceedings of these courts. High Courts can transfer any suit from one court to another

of equal or superior jurisdiction. A High Court may, on application of the Advocate-General for the Federation or for a Province, transfer to itself for trial a case pending before inferior courts if the case involves or is likely to involve the question of the validity of a federal or provincial Act. In matters concerning constitutional issues under the Act of 1935 an appeal lies from High Courts to the Federal Court and even to the Privy Council. From a decision of a High Court in its original capacity an appeal lies to a bench of two or more judges of the same court. Under certain conditions where the subject-matter of the suit is of the value of Rs. 10,000 or more, or when a substantial question of law is involved, an appeal lies from High Courts to the Privy Council in London.

The Governor-General, the Governors, the Counsellors of the Governor-General, Ministers, Chief Justices and Judges of High Courts are exempted from the jurisdiction of High Courts in any action that any one of them may have taken in the performance of his public duties, nor are they liable to arrest or imprisonment.

All proceedings in High Courts are in English. Administrative charges of High Courts are charged on provincial revenues and the fees and other moneys taken by them accrue to provincial revenues. The Governor in his individual judgment decides what amount of these expenses is to be included in the estimates of expenditure placed before the legislature.

The Crown may constitute or reconstitute a High Court or amalgamate two High Courts.

### INFERIOR COURTS

The organisation of the judicial system below the High Court in Provinces varies slightly from Province

to Province, but its general features are the same in all Provinces.

#### INFERIOR CIVIL COURTS

**DISTRICT JUDGES** For the administration of justice, as for the general administration, a Province is divided into districts and sessions divisions approximately corresponding to the districts. Broadly speaking, one district and sessions judge is appointed for each sessions division. Exercising appellate jurisdiction over the civil judges of the districts on the one hand and over the magistrates on the other, as well as the highest original jurisdiction in the districts, both criminal and civil, is the district and sessions judge. He is responsible for the management of all the inferior civil courts within its district and it is his duty to distribute work among those courts. These posts are reserved for the members of the Indian Civil Service and only a proportion of them are filled by appointments from the provincial judicial service or directly from the Bar. The appointment, posting and promotion of district judges are made by the Governor exercising his individual judgment, but the High Court must be consulted before a recommendation for such an appointment is submitted to the Governor. The expression "District Judge" now includes additional district judge, joint district judge, assistant district judge, chief judge of a small causes court, chief Presidency magistrate, sessions judge and assistant sessions judge. For a person who is not already in the service of the Crown to be eligible for the post of district judge, he must be a barrister or an advocate of Scotland or a pleader of at least five years' standing and must be recommended by the High Court.

### THE SUBORDINATE JUDICIARY

Next comes the subordinate judicial service, which is defined as "a service consisting exclusively of persons intended to fill civil posts inferior to that of district judge." Subordinate judges, who are divided into first and second class, hear suits up to the amount permitted to their class by law. Their jurisdiction varies in different provinces. The Governor after consulting the Public Service Commission and the High Court makes rules defining the standard of qualifications for persons desirous of entering this service. The Public Service Commission is to hold such examinations as the Governor thinks fit and prepare a list of qualified persons. The Governor makes appointments from these persons, having regard to the rules as to the number of persons who are to belong to different communities. The posting and promotion and the granting of leave to the members of this service are in the hands of the High Courts.

In large towns there are also a number of courts of small causes to try money suits up to Rs. 500.

In Presidency towns all civil suits ordinarily come before the High Court. But for a speedy and less expensive system of justice small causes courts are established to dispose of money suits up to Rs. 2,000.

There is no appeal from the small causes court, though in certain cases the judge may refer a case to the High Court, or a revision may lie. In the Presidency towns High Courts exercise insolvency jurisdiction. In the mofussil it is exercised by district courts.

**APPEALS** The law allows ample latitude for appeals in civil cases. An appeal lies from every decision of a second class subordinate judge or munsiff

to a district judge. The district judge may transfer such appeals to subordinate judges for disposal. Every decree or order made by a subordinate judge is appealable to the district judge or to the High Court. On certain conditions, as already pointed out, appeals from the High Court lie to the Privy Council in London and in cases involving constitutional issues to the Federal Court.

#### INFERIOR CRIMINAL COURTS

**SESSIONS JUDGE** The Code of Criminal Procedure provides for the constitution and functions of inferior criminal courts styled courts of sessions and courts of magistrates. Every Province is divided into sessions divisions, each consisting of one or more districts. In every such sessions division there is a court of sessions presided over by a sessions judge who may be assisted by additional or assistant sessions judges. These judges who mostly belong to the Indian Civil Service (and at times are those holding "listed" posts) are competent to try all accused persons duly committed and to inflict any punishment authorised by law subject to appeal; but every sentence of death is subject to confirmation by the High Court.

#### MAGISTRATES AND THEIR POWERS

Below the courts of sessions come courts of magistrates who are partly members of the Indian Civil Service and mainly drawn from the provincial services. The courts of magistrates are of three classes: those of the first class having powers of passing sentence of imprisonment up to two years and a fine of Rs. 1,000, and those of the second and third class having powers of passing sentence of imprisonment up to six months and one

month and fines of Rs. 200 and Rs. 50 respectively. Only those of the first class are empowered to pass sentence of whipping.

Of the magistrates the chief is the district magistrate who is also the Collector and district officer.<sup>1</sup> He exercises supervision over all magistrates in the district, but does not himself find time to try many cases. Under him are the sub-divisional magistrates, either assistant collectors or deputy collectors, who in turn have certain supervisory powers within their areas. These magistrates have first class powers. They have appellate jurisdiction over magistrates not fully empowered and powers of committing more serious cases to the sessions court and of taking bonds to keep the peace or be of good behaviour. The district and sub-divisional magistrates may belong either to the Indian Civil Service or the provincial service. Below them is the mamlatdar or tahsildar who is in charge of a taluka or tahsil. He has either first or second class powers. Below him is the head or *aval karkun* who has third class powers. These magistrates are appointed by the Provincial Government and are subordinate to the district magistrate. In Madras Presidency and in some villages of Bombay Presidency the Patel or the headman of the village possesses petty criminal powers. Similar powers are also enjoyed by panchayats in Madras.

In Presidency towns there are Presidency Magistrates to try minor offences and commit to High Court persons charged with serious crimes. In large towns honorary magistrates known as Justices of Peace are appointed for the disposal of petty crimes.

<sup>1</sup> For separation of judicial and executive functions and powers see p. 214.

It is provided under the Act of 1935 that as regards subordinate criminal magistracy no recommendations shall be made for the grant and enhancement of magisterial powers or withdrawal of such powers from any person without the consultation of the district officer under whom the subordinate magistrate is serving.

**CORONER** Subject to the order of the magistrate, the police perform the duty of holding an inquest on the bodies of those who have come to an untimely death. In Calcutta and Bombay there is a court with a coroner assisted by a jury for holding such inquests.

#### JURY AND ASSESSORS

Trial by jury is the most cherished privilege of persons accused of crimes. With a view to avoiding miscarriage of justice as far as is humanly possible the practice of trial by jury in criminal cases which is prevalent in England has also been introduced in India. In India ordinary petty criminal cases are tried without the aid of jury or assessors, but all serious cases are tried with the aid of jury or assessors. In original criminal cases before the High Court trial by jury is the rule. In the mofussil, as it is not always possible to empanel an efficient jury, trials before the courts of sessions are conducted with the aid of jurors or of assessors who assist but do not bind the judge by their opinion. When trial is by jury, the sessions judge, if he considers that a jury has returned a manifestly wrong verdict, has to submit the case to the High Court, which may set aside or modify the finding. A jury in India consists of nine persons in trials

before the High Court and in other trials of such uneven number up to nine as may be prescribed by the Provincial Government. Before 1923 a European British subject had a right to be tried by a jury consisting of a majority of Europeans, but this privilege was not extended to Indians. Since 1923 this privilege is also extended to Indians. At present both Europeans and Indians can claim to be tried by a jury consisting of a majority of Europeans and Indians respectively. The number of assessors may be three to four. Judgment may be given on the verdict of the majority, provided the judge agrees with it and, in the case of the High Courts, provided the majority includes at least six jurors.

### APPEALS

The law allows a considerable latitude for appeal in criminal cases. From a conviction by a second or third class magistrate an appeal lies to the district magistrate, and subject to certain limitations, original convictions by a magistrate of the first class are appealable to the sessions judge, whose own original convictions are in turn appealable to the High Court. The High Court may call for and examine the records of any proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality, propriety or regularity of any finding, sentence or order. A finding of acquittal is ordinarily final and may be appealed against under special orders of the Provincial Government or may be revised by the High Court. There is no provision for appeal against the conviction by the High Court on its original side except in cases in which the Advocate-General grants a certificate for an appeal to the Privy Council.

The Prerogative of Mercy is exercised by the Governor-General in Council and the Provincial Governments concerned without prejudice to the superior powers of the Crown. Under the New Constitution it will be exercised by the Governor-General and the Governors.

## CHAPTER XII

### THE SERVICES

“The system of responsible government, to be successful in practical working, requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministers advice based on long administrative experience, secure in their positions during good behaviour, but required to carry out the policy upon which the Government and the Legislature eventually decide.”

J. S. C. REPORT.

“The organisation and direction of the general administrative system, whether at headquarters or in the districts, rests upon the Indian Civil Service; and upon it and the Indian Police Service—the ‘Security Services’—essentially depends the maintenance of law and order.”

SIMON COMMISSION REPORT, vol. ii.

#### I. Historical

The Indian Civil Service is derived from the staff of merchants, factors and writers employed by the East India Company when it was a purely commercial body. For some time after the Company acquired political power, the administration was left in the hands of the native subordinates. In 1722 the Company began to take the administration into its own hands. Between 1790 and 1793 all branches of the public service manned by European officers were placed on a clear and permanent basis by Lord Cornwallis who created the “Covenanted Service.” All civil posts were reserved for this service. Promotion was regulated by seniority. A college was set up at Calcutta

for the training of junior civilians in law and oriental languages. In 1806 Haileybury College was established to train the members before they joined the service. Admission was by nomination by the Court of Directors. In 1853 the principle of regulating admission to the college by open competition was laid down. On the transfer of the Government to the Crown in 1858, the principle of open competition was reaffirmed.

It was enacted in 1833 that "No native of the said territories (India) nor any natural born subject of His Majesty resident therein shall by reason only of his religion, place of birth, descent, colour, or any of these, be disabled from holding any place, office or employment under the said (East India) Company." In spite of this provision, up to 1870 only one native of India had successfully competed for the Covenanted Service. Owing to social, religious and financial difficulties it was not possible for Indians to go to England to compete for the service. Hence in 1870 it was provided by an Act that natives of India of proved merit and ability might be employed in the Civil Service without going through the competitive examination in London. One or two appointments only, and those in the judicial branch of the service, were made under it. The subject was reconsidered in 1879 and fresh provision was made under which the recruitment by this means could extend up to one-fifth of the total number of civilians appointed in the year. These appointments were generally to be confined to young men of good family and social position, possessed of fair abilities and education. For some years a few persons were recruited from this source. But the experiment proved a failure, as men who

combined high social position with requisite intellectual and educational qualifications could not be found. Owing to the failure of this experiment the Government, with the object of devising a scheme to do justice to the claims of natives of India to higher employment in the public service, appointed a Commission which submitted its report in 1887. On the advice of this Commission, the Civil Service was divided into three branches, the Indian Civil Service, the Provincial Civil Service and the Subordinate Civil Service, the first being entirely recruited in England by competitive examination.

THE ISLINGTON  
COMMISSION  
1912-15

The Civil Service in India came under a detailed review in 1912 by the Royal Commission on Public Services of which Lord Islington was chairman. It submitted its report in 1915. The Commission devoted itself mainly to exploring the possibilities of employment of Indians in the superior services and to an examination of the conditions of service. Owing to the War, the consideration of its proposals was deferred and the report was not published till June 26, 1917. Before the report could be considered the facts on which it was based had materially altered. On August 20, 1917, the Secretary of State announced in the House of Commons that the policy of His Majesty's Government towards India was, among other things, that of the increasing association of Indians in every branch of the administration. During the War the cost of living had gone up, a factor not taken into consideration by the Commission in the rates of pay proposed. Hence the orders passed on the recommendations of the Commission in 1919-20 suffered inevitably from

having been based on an investigation which subsequent events had rendered obsolete.

The Montagu-Chelmsford Report reviewed the services and in a masterly manner explained the position of the services under the reforms. The authors of the Report pointed out that recruitment in England was not adequate to supply a sufficiency of Indian candidates, hence the system should be supplemented by fixing a definite percentage of recruitment to be made in India. The Report laid stress on Indianisation, improvement in the conditions of the European members and statutory protection of the services. The members of the services were perturbed at the introduction of the reforms. They demanded safeguards. It was recommended that the members of the All-India services, with a few exceptions, might be allowed to retire before they completed the service ordinarily required for retiring pension and in this case they were to receive a pension proportionate to their actual service. After the inauguration of the reforms and the new policy, the relations between the political classes and the services instead of being improved were markedly worsened. Persistent criticisms of the services in the legislatures had a discouraging effect on services accustomed to a traditional respect. Other factors aggravated their trouble. The Non-Co-operation Movement of 1920-22 involved the officers and their families in general disrespect and even in serious danger. Moreover their financial position, owing to a great rise in prices, was at the time a source of great anxiety to them. Hence, pursuant to the recommendation of the Montagu-Chelmsford Report, for the officers in the service to whom the new conditions were so repugnant that they preferred to retire, a scheme was

adopted under which All-India officers selected for appointment before January 1, 1920, and not permanently employed under the Government of India, were allowed to retire before they had completed the normal full service on a pension proportionate to their length of service. Under this scheme, 200 All-India service officers had retired by 1922, and by 1924 the number had risen to 345. By far the greater number of them were officers of ten to twenty-five years' service. This exodus had a secondary effect which was equally important. Recruitment to the services in England was suspended during the War and the tradition that India offered a career for young Englishmen had hardly begun to revive when it was confronted with the outspoken discontent of the services in India and premature retirement of many officers. The sources of recruitment in England had practically dried up. While this was the situation within the services, Indian political opinion was concentrated on two points: (1) The All-India services were at this time mainly European in composition. Though the Preamble to the Act of 1919 declared that "the increasing association of Indians in every branch of Indian administration" was the policy of Parliament, Indian opinion did not accept as adequate the rate of Indianisation that had been established. (2) It was also contended by some Indians that the recruitment and control of any service by the Secretary of State should cease altogether. These factors led to the appointment of the Royal Commission on the Superior Civil Services in India, of which Lord Lee was chairman. The Commission submitted its report in 1924. Its recommendations have been accepted and acted upon by Government.

Federal and Provincial Commissions are paid from the federal and provincial revenues respectively.

Thus it is quite clear that the position, emoluments and privileges of the members of the services are secured and safeguarded to the extent to which it is humanly possible to do so in a constitution.

PRESENT  
ORGANISATION

The Civil Services in India are classified in three main divisions: (1) The All-India Services, (2) the Central Services, (3) Provincial Services (including subordinate Services). The All-India Services, though they work no less than the Provincial Services under the Provincial Governments, are all appointed by the Secretary of State and he is the final authority for the maintenance of their rights. The All-India Services consist of the Indian Civil Service, the Indian Police Service, the Indian Medical Service (civil), Indian Forest Service, the Indian Service of Engineers, the Educational Service, the Agricultural Service and the Veterinary Service. Recruitment by the Secretary of State to the Building and Roads Branch of the Service of Engineers, the Educational Service, the Agricultural Service and the Veterinary Service has, as has already been stated, ceased since 1924 on the recommendation of the Lee Commission. Recruitment by the Secretary of State to the Forest Service and the Service of Engineers has ceased with the inauguration of the New Constitution. The only All-India Services which are now recruited by the Secretary of State are the Indian Civil Service, the Indian Police and the Indian Medical Service (civil). The composition and the total strength of these services on January 1, 1933 were as follows:

	<i>Europeans.</i>	<i>Indians.</i>	<i>Total.</i>
Civil Service.	819	478	1,297
Police.	505	152	657
Forest Service.	203	96	299
Service of Engineers.	304	292	596
Medical Service.	200	98	298
Educational Service.	96	79	175
Agricultural Service.	46	30	76
Veterinary Service.	20	2	22
	<u>2,193</u>	<u>1,227</u>	<u>3,420</u>

The standard aimed at in these services is high and the field of recruitment is the widest possible in Britain and India. On appointment, an officer is assigned to a Province and undergoes a period of training in Britain. A recruit to the Indian Civil Service, for example, studies, at one of the universities, the principal vernacular of his Province and the legal system with which he is concerned. If a person is recruited as a result of the examination held in India, he is sent to one of the British Universities to complete his studies for two years. Unless he is transferred to service under the Central or Federal Government he passes the whole of his career in the Province to which he is first assigned, but he remains liable to serve anywhere in India. Those serving in Sind and Orissa, which are made separate Provinces, are on a joint cadre and are considered as serving in Bombay and Bihar also. Each of the All-India Services, notwithstanding their divisions among the Provinces, form a single service, with a common status and a common standard of rights and remuneration.

### THE CENTRAL SERVICES

The Central Services are concerned with matters under the direct control of the Central or Federal Government. Apart from the Central or Federal Secretariat the more important of these services are the Railway Service, the Indian Post and Telegraphs Service and the Imperial Customs Service. Till 1937 some of the posts in these services were filled by the Secretary of State. Now all the members are appointed and controlled by the Government of India. The Anglo-Indian community has furnished a large number of recruits to the Central Services. Recruitment is by examination held by the Public Service Commission.

### THE PROVINCIAL SERVICES

The Provincial Services constitute the middle grades of the administration. These services cover the whole field of provincial civil administration in the middle grade. Appointments to these services are made by the Provincial Governments from the list of candidates supplied by the Provincial Public Service Commission. Recruits are in general graduates of Indian Universities. In many branches of the administration, members of All-India and Provincial Services work side by side, though the higher posts are usually filled by the former. A proportion of the posts for which the Indian Civil Service is primarily recruited are "listed," i.e., reserved for selected members of the Provincial Services—such as the charge of a district or the post of district and sessions judge. There are subordinate services under Provincial Services covering the whole field of provincial administration in

the lower grades. Appointments are made by the Provincial Governments or departmental heads and the recruits are either graduates or matriculates of the Indian Universities.

### CONCLUSION

The public services in India are undoubtedly efficient. Till the Reforms of 1919, generally speaking, the Civil Services governed the country. They worked with full personal responsibility and power. After the Reforms they worked with delegated responsibility and modified personal power. But their power and influence over the entire system of administration were neither substantially nor effectively diminished. They have acquired vested interests in the political system; hence their misgivings on the introduction of the constitutional reforms. Having enjoyed vast powers, privileges, position and respect, they naturally found it difficult to adapt themselves to new conditions under a responsible government. However, they have inevitably and splendidly adjusted themselves to the new conditions.

The Civil Service of India has always been an attractive service and it continues to be so even under the New Constitution. The start is good, promotion is certain, the future is guaranteed and the prizes in one's way are many. Indian public opinion is critical about the comprehensive statutory safeguards provided for them in the New Constitution. Indians maintain that these safeguards negative the spirit of responsible government. Again it is pointed out that the main administrative structure in British India is based on the district officers and the members of the Police Service. These officers have to work

under ministers, but the conditions of their service and recruitment are not within the control of ministers, hence an anomalous situation arises, rendering the working of the system difficult. Against this it is urged that it is only an inevitable and transitional measure when India is on the way to full responsible government.<sup>1</sup>

As regards Indianisation it is urged that even the recommendations of the Lee Commission, though accepted by the Government, are not fully carried out. In most of the services the full percentage of Indians as laid down by the Commission has not been established. Indians maintain that except in some special cases which require technical or expert knowledge, or for some particular reason, recruitment of Europeans to all services should henceforth cease altogether. They state that such Europeans, in any number necessary for particular branches of administration, may be appointed on a contract system on adequate remuneration. On the other hand, the British element in higher services is considered indispensable for an indefinite period.<sup>2</sup> Indians maintain that having regard to

<sup>1</sup> The whole question is to be reviewed not earlier than five years after the inauguration of the New Constitution.

<sup>2</sup> The Lee Commission laid down that by 1939 a fifty-fifty ratio of recruitment to the Indian Civil Service between Indians and Europeans shall be achieved. During recent years the number of European recruits was smaller than necessary for maintaining that ratio. Hence the Secretary of State is to recruit a number of graduates of the British Universities by nomination instead of recruiting them by competitive examination, to make good the deficiency of European members. This new policy of recruitment by nomination is disapproved by the Legislative Assembly. In defence of this policy Sir Henry Craik, on behalf of Government, said that though Delhi was made the main source of Indian recruitment in 1922, actually since that year only ninety-four Indians had been appointed through it as against 194 through the London door. It was essential that the fifty-fifty ratio fixed by the Lee Commission and accepted by Parliament should not

the poverty of the people and the available financial resources the salaries and emoluments of the members of the services are very high and that they constitute a heavy burden on the taxpayers. They favour a reduction in the scale of salaries. As against this demand it is pointed out that, having regard to the conditions of the services and their efficiency, the salaries and emoluments are not excessive, but only adequate.

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be disturbed till a statutory inquiry into the recruitment for the security services contemplated by the White Paper took place, not earlier than five years after provincial autonomy. Under this principle, since 1931, 350 candidates should have been recruited, of whom half should be Indians and the other half Europeans. Actually ninety-six Europeans and 162 Indians had been recruited. Hence the service was undermanned, causing serious administrative difficulties. On these grounds he justified the new policy.

## CHAPTER XIII

### HOME GOVERNMENT OF INDIA

#### I. Historical

After the Mutiny of 1857 the Act for the Better Government of India transferred the Government of India from the Company to the Crown and vested in the Crown all the territories and powers of the Company. That Act created the new office of Secretary of State for India to transact the affairs of India in England and to exercise all the powers formerly exercised either by the Court of Directors or the Board of Control. It also established the Council of India, consisting of fifteen members, with the object of providing the Secretary of State with information and advice on Indian questions.

#### THE SECRETARY OF STATE FOR INDIA

The office of Secretary of State for India and the Council of India, as we have already seen, were created by the Act of 1858. The Secretary of State for India, a member of the British Cabinet, is the immediate agent of Parliament for the discharge of its responsibility in Indian affairs. It is through him that Parliament maintains its control over the Government of India and keeps itself informed of everything that concerns its responsibility in that regard. The Government of India Act of 1919 prescribes his powers and defines the region within which he is responsible

to Parliament. He is authorised to superintend, direct and control all acts, operations and concerns which relate to the government or revenues of India. The Governor-General and through him the Provincial Governments are required to pay due obedience to his orders. He is the constitutional adviser of the Crown in matters relating to India. All official communications and orders are signed by him. It is on his advice that all appointments by the Crown are made and he has the power of dismissal. Except in some specified matters he can over-ride his Council.

#### THE COUNCIL OF INDIA

The Council of India conducted, under the directions of the Secretary of State, the business transacted in the United Kingdom in relation to the government of India and the correspondence with India. The Council was a consultative body, with a limited veto and without the power of initiative. Its constitution had been altered from time to time. Special care was taken to secure at least half of its members from amongst those who had long residence or service in India and who had left India only recently. Vacancies in the Council were filled by the Secretary of State. Each member received a salary of £1,200. An Indian member received an extra allowance of £600 a year. In 1936 the Council consisted of eight to twelve members. They were appointed by the Secretary of State for a term of five years, and half of them were persons who had long and recent experience of India. They were not and could not be members of Parliament. A member was removable from office only on an address of both Houses of Parliament. The questions which required the concurrence of a majority

vote at a meeting of the Council were, (1) grants or appropriations of any part of the revenues of India, (2) the making of contracts for the purpose of the Act, (3) the making of rules regulating matters connected with the Civil Service. Outside this field the Secretary of State had full powers to decide the matters according to his own opinion. Since 1907 there have been two Indian members of the Council. The Council was divided into committees for transacting business.

The salary of the Secretary of State and the expenditure of his office were not till 1919 included in the annual estimates voted by the House of Commons but were paid from Indian revenues. A detailed account of receipts and charges both in India and in England was annually laid before Parliament, together with a report on the moral and material progress of the people of India.

Thus in theory Parliamentary control over Indian affairs was complete, but in fact it was hardly real. Indian affairs were, ever since the fall of the Coalition Ministry in 1783, kept outside British party politics. As the salary of the Secretary of State was not voted by the House of Commons, Parliament had little occasion to take active interest in Indian affairs. The presentation of accounts and the report by the Secretary of State, generally at the fag-end of the session, to the House of Commons, was only a formal matter and it was usually adopted as a matter of course. During the whole period from 1858 to 1919 the interest of Parliament in Indian affairs was neither well-sustained nor well-informed. In fact, after 1858 Parliament became a direct guardian of India but it remained a sleepy guardian. The Government of India was controlled by the Secretary of State in

the name of Parliament, but his policy and acts generally remained unscrutinised and uncontrolled by Parliament except in a few cases in which the United Kingdom was primarily interested.

#### CHANGES INTRODUCED BY THE ACT OF 1919

The declaration of August 20, 1917, contained the policy of His Majesty's Government towards India. Progressive realisation of responsible government as an integral part of the British Empire was laid down as the ultimate goal of British rule in India. But it was not possible to relax Parliamentary control over British India. It was also thought that no step could be taken towards responsible government at the centre. The policy was therefore given effect in the Provinces, where partial responsibility was introduced, and consequential changes were introduced both in the Central and Home Government of India.

By the Act of 1919 the salary of the Secretary of State and the expenses of his political establishment were transferred to the British Exchequer. A joint committee of both Houses of Parliament was appointed to study Indian questions and to help Parliament. Provision was made for the publication in England of a handy report on the moral and material progress of India at a moderate price, to encourage the British democracy to take an interest in Indian questions. The Act provided for the appointment of a Statutory Commission at the end of ten years to examine the working of the reforms with a view to either extending them or withdrawing them. Thus Parliamentary control was strengthened over British India.

To the extent to which partial responsibility was introduced in the Provinces and certain departments

were transferred to Ministers, the control of the Secretary of State was relaxed. As Parliament remained supreme over the Government of India there was no statutory delegation of authority. But the Secretary of State was given power to regulate and restrict his authority over the Government of India by rules approved by both Houses of Parliament. Under the rules, in purely provincial matters which were reserved and in which the Provincial Government and legislature were in agreement, it was understood that their views should ordinarily be allowed to prevail. Over transferred subjects the control of the Governor-General and that of the Secretary of State was restricted within the narrowest possible limits.

#### HIGH COMMISSIONER FOR INDIA

With the object of relieving the Secretary of State of agency work a new post of High Commissioner for India in London was created. He does the agency work on behalf of the Central and Provincial Governments. He is appointed by the Government of India, is paid from Indian revenues and is primarily responsible to the Government of India. He advises and looks after Indian students studying in England. He usually represents India at international conferences, and other important gatherings. He supplies commercial information and protects and promotes Indian commercial and trade interests in London.

#### FISCAL CONVENTION

It was believed that India's fiscal policy was dictated from Whitehall in the interests of Great Britain. With the object of removing this belief the Joint Select Committee laid down that India should have the same liberty in fiscal policy

to consider her own interests as Great Britain and other self-governing dominions. It was therefore understood that in fiscal matters, when the Government of India and the central legislature were in agreement, the Secretary of State should avoid interference except to safeguard Imperial obligations or the arrangements within the Empire to which His Majesty's Government was a party. This understanding has come to be known as the "Fiscal Convention" and it has been unhesitatingly observed.

The Act of 1919 modified the composition of the Council of India. It also modified the qualifications of its members. It shortened the period of service in order to ensure a continuous flow of fresh experience from India.

Thus paradoxically the Government of India Act, 1919, at once strengthened and relaxed Parliamentary control over British India.

## II. The Home Government of India under the Act of 1935

SECRETARY  
OF STATE  
FOR INDIA

Under the Act of 1935 the authority of the Secretary of State in Council over India is vested in the Crown and is exercised on the advice of the Secretary of State, who is a member of the British Cabinet. The Prime Minister of Great Britain has the right to select the Governor-General and he is to be consulted as regards other high appointments.

HIS ADVISERS The Council of India is abolished. However, to provide the Secretary of State with experience and advice on Indian questions he is to

be aided by advisers with special duties in certain cases. The advisers are to be not less than three or more than six, of whom half at least must have served for ten years in India and must be appointed within two years of ceasing to work in India. The Secretary of State may remove any member on the ground of infirmity of mind or body. Every member is to receive a salary of £1,350 per year. A member with Indian domicile is to receive an extra amount of £600. The Secretary of State is at liberty to consult them individually or collectively or to ignore them. He may act or refuse to act according to their advice except in certain specified matters (duties as regards the services of the Crown). The advisers cannot be members of either House of Parliament.

Parliament provides moneys for the salaries of the Secretary of State and his advisers and for the expenses of his department. The staff of the Secretary of State is placed on the same footing as British civil servants.

#### HIGH COMMISSIONER FOR INDIA

We have already seen that the office of High Commissioner for India was created under the Act of 1919. We have also seen his functions. Under the New Constitution he is to be controlled by the Governor-General in his individual judgment. He may be authorised to act for a Province, a Federated State or Burma.

The auditor of Indian Home Accounts, who is appointed in London, is also under the control of the Governor-General.

The responsibility of the British Parliament for the government of India remains undiminished. To the extent to which full provincial autonomy is introduced

in the Provinces, and to the extent to which partial responsibility is introduced at the centre, the control and authority of the Secretary of State is relaxed. But in matters which are reserved to the Governor-General, viz., defence, external affairs, ecclesiastical affairs and tribal areas, and in matters for which the Governor-General and the Governors have special responsibility, the Governor-General and the Governors are subject and responsible to the Secretary of State.

**PREAMBLE TO THE  
ACT OF 1919**

In the Preamble to the Act of 1919, which remains unrepealed, Parliament has set forth finally and definitely the ultimate aims of British Rule in India. Subsequent statements of policy have added nothing to the substance of this declaration. It is believed that the natural issue of India's constitutional progress is the attainment of Dominion Status.<sup>1</sup>

The Preamble is:—

“WHEREAS it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire.

“AND WHEREAS progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken.

<sup>1</sup> Dominion Status is the status enjoyed by the self-governing Dominions: Canada, Australia, New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland. They are practically independent for internal purposes. The Crown is the vital link that holds together the United Kingdom and the Dominions.

“AND WHEREAS the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples.

“AND WHEREAS the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

“AND WHEREAS concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities.”

## CHAPTER XIV

### AMENDMENT OF THE CONSTITUTION, ETC.

The Indian legislature has no power of amending the Constitution. That power is vested in the British Parliament. The Government of India Act, 1935, can be amended only by the British Parliament. But in minor matters the Act authorises amendments by Order in Council, with the assent of the British Parliament, on requests by the federal or provincial legislature, not earlier than ten years as a rule from the establishment of the Federation and provincial autonomy. These matters are: (1) the size and composition of the chambers of federal legislature and the choice or qualifications of members, but not so as to vary the relative proportion between the Council and Assembly or between the British Indian and State seats; (2) the number of chambers in provincial legislatures, their size or membership; (3) the establishment of literacy in lieu of higher educational qualifications for women franchise, or the entry of names of qualified women without application; (4) any other amendment as to qualifications of voters. The changes under the third head may be made at any time, if a request is received from a provincial legislature. Again, any of these matters may be varied by Order in Council at any time, but only after the views of the Governments and legislatures affected have been ascertained. All such Orders in Council must be made in draft before Parliament and be approved by both

Houses, save in emergency, when the order may be issued but will lapse unless so approved. The drafts of Instruments of Instructions to the Governor-General and the Governors also require affirmation by both Houses. Instruments of Instructions have been utilised in the case of self-governing dominions for facilitating the evolution of responsible government. Those Instruments were issued in the exercise of the prerogative of the Crown and were not submitted to Parliament. In the case of India not only the original Instruments but also the subsequent amendments are to be approved by Parliament. Thus any amendment or any change in the exercise of authority by the Governor-General or the Governors by a change in the Instrument is not possible in the case of India without the sanction of the British Parliament.

### **Transitional Measures**

Provisional autonomy and federation are not to be introduced simultaneously, hence there is to be a transitional period between the inauguration of provincial autonomy and the establishment of federation. The establishment of provincial autonomy necessitates consequential changes in the powers of both the central legislature and executive.

During the transitional period the central legislature will exercise the functions of the federal legislature, so far as British India is concerned. Executive power, such as the Federation will possess, will vest in the Governor-General in Council or, in matters under the Federation placed in his discretion, in the Governor-General in respect of British India. The Governor-General will have special responsibilities

as provided in the Federation. In all matters the Governor-General and the Governor-General in Council remain subject to the Secretary of State. The Secretary of State must have the concurrence of a majority of his advisers, who are to be between eight and twelve, in matters of the grant or appropriation of the revenues of the Government of India.

Till federation is established no sterling loan shall be raised by the Governor-General in Council. But under the authority of Parliament a loan may be raised by the Secretary of State with the concurrence of a majority of his advisers. The Indian legislature is forbidden to limit the borrowing power of the Governor-General in Council.

The Federal Railway Authority, the Federal Public Service Commission and the Federal Court may be brought into existence for purposes connected with British India before federation, either simultaneously with or later than provincial autonomy. Except for these changes the whole structure of the Central Government remains unaltered during the transitional period.

By an Order in Council called the Government of India Commencement and Transitory Provisions Order, made on July 3, 1936, it is announced that the New Constitution will begin to function in the Provinces on April 1, 1937. This Order has also provided for all consequential and necessary changes for the working of the Central Government and the central legislature during the interval between the inauguration of Provincial Autonomy and the establishment of the Federation.

# PART II



## CHAPTER XV

# DISTRICT ADMINISTRATION IN BRITISH INDIA

“As the senior representative of the Crown in your district, you (District Officer) constitute the essential link between the Government and the rural population. The cultivators of India look to you for guidance, help and comfort.”

THE MARQUESS OF LINLITHGOW in a  
Broadcast, April, 1936.

The most important unit of administration in British India is the District, which is the keystone of the whole administrative structure. Every inch of soil (except Presidency towns and some small areas) forms part of a district. British India contains 269 districts. The average size of the district is 4,075 square miles and the average population is 1,000,000. The actual districts vary greatly in size and density of population, but very few have an area less than 1,500 square miles or a population less than half a million.

### THE DISTRICT OFFICER

At the head of every district there is a District Officer, known in some provinces as the Collector and in others as the Deputy-Commissioner. He is generally a member of the Indian Civil Service and at times one holding a “listed” post. He is, in the eyes of the most of its inhabitants, “the Government.”

**AS A COLLECTOR** The District Officer has a dual capacity. He is both the Collector (the principal revenue officer) and the chief magistrate. As Collector he is the head of revenue organisation and is concerned with the land and land revenue and with all matters affecting the conditions of the peasantry. In all districts (except in permanently settled areas) he can at any time be in touch through his revenue subordinates with every inch of the district. This revenue organisation serves the specific purpose of collecting the revenue and of keeping the peace. It also simultaneously discharges easily and effectively an immense number of other duties. It deals with the registration, alteration and partition of holdings, the settlement of disputes, the management of indebted estates, loans to agriculturists and above all famine relief. Because it controls revenue which depends on agriculture, the supreme interest of the people, it serves also as a general administration staff.

**AS A MAGISTRATE** The Collector in his capacity as a District Magistrate has first-class powers and can imprison for two years and fine up to Rs. 1,000. In practice he does not try many criminal cases though he supervises the work of all the other magistrates of the district. The District Magistrate as the chief executive authority is primarily responsible for the maintenance of law and order and the criminal administration of the district, and for this purpose the police force is under his control and direction. The District Superintendent of Police is his assistant for police purposes and it is his duty to keep the latter fully informed both by personal

confidence and by special reports on all matters of importance concerning the peace of the district and the prevalence of crime. The District Superintendent of Police is the head of the District Police Force. He is responsible for all matters relating to its internal management and for the maintenance of discipline. In effect, the two officers work together.

For the proper discharge of his duties the Collector-Magistrate must be accessible to and intimately acquainted with the inhabitants of his district, hence he spends as a rule several months of the year in camp visiting all parts of his district. The real source of the influence of the District Officer is the camp. For the administration of Indian villages "the tent is mightier than the pen," hence the new Viceroy is both eager and anxious to relieve the District Officer of some of his desk-work to enable him to spend more time in camps.

Each district has its body of district heads of departments, the district and sessions judge, the district superintendent of police, the civil surgeon, the conservator of forests, the executive engineer—each of whom is under his own provincial departmental chief. But except in matters of pure routine, the Collector must be informed of almost every activity in all these departments because it impinges at some point upon the operation of the governmental agency in the district. In all Provinces even after the Reforms the District Officer continues to be the officer who co-ordinates the activities of the various governmental agencies in his district. On him and on his subordinates the Government still depends for maintaining contact with the whole population in his area and for information concerning its general welfare.

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Thus the chief authority of the District Officer arises from the combination in one person of the chief administrative and magisterial authority of the district.

**ASSISTANT OR  
DEPUTY-COLLECTOR**

The district, being too large to manage as a single unit, is subdivided for administrative purposes.

The District Officer administers these subdivisions with the assistance of a large staff of subordinate officers, some of whom are his assistants at headquarters while others hold charge of portions of the district. In general the district is split up into three or four sub-divisions under junior officers of the Indian Civil Service known as Assistant Collectors or Members of the Provincial Service styled Deputy-Collectors. A sub-divisional officer has, under the control of the District Officer, general charge of the executive and magisterial administration of his sub-division. He is a magistrate with first-class powers. He also supervises land revenue administration. A sub-division consists of three or four units called in nearly all Provinces Talukas or Tahsils, and about four to ten of these form a district.

**MAMLATDAR OR  
TAHSILDAR**

A Taluka or Tahsil is in charge of a revenue officer and magistrate styled Mamlatdar or Tahsildar. He belongs to the subordinate service and is a magistrate either with first or second class powers. He must know the conditions of every village in his Taluka or Tahsil. To achieve this object he regularly spends some months in camp touring the Taluka. The Mamlatdar has his parallel in all services in the

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Taluka, such as the Inspector of Police, the Inspector of Excise, the Overseer and the Medical Officer.

PATEL, TALATI AND CHOWKIDAR A Taluka or Tahsil consists of seventy to hundred villages. There are 500,000 villages in British India.

The village is the lowest administrative unit in British India. Even to-day at the basis of the administrative system the village organisation finds its place and plays a very important part in the social life of the country. The village is in charge of a headman or Patel who is largely a hereditary occupant of the post. He collects land revenue and looks after law and order in the village. In some Provinces, particularly in Madras and Bombay, he is also a petty magistrate. The other village official is the village accountant, known as the Talati or Kulkarni or Patwari, who keeps the village accounts, registers of holdings and in general all records connected with land revenue. Every village has a Chowkidar or a village watchman who is a rural policeman. There is also a hereditary village servant under the Patel.

Thus the administrative system in British India is based on the repeated sub-division of territory, each administrative area being in the responsible charge of an officer who is subordinate to the officer next in rank above him.

#### LOCAL INFLUENCE OF DISTRICT OFFICER

The Collector of a district enjoys great prestige among the inhabitants whom he serves. To most of them he is the embodiment of Government. Before 1919 he was also a Chairman of the District Local Board and had also the duty of the assessment of

income tax in the district. His official authority is augmented by the constant exercise of advice and direction in matters where he is expected to give a lead. He wields large powers of patronage; he is responsible for making a large number of minor appointments, such as village headmen and accountants, revenue officials and office clerks. His recommendations for honorary magistrateships and nominated memberships of local bodies are ordinarily accepted. He grants seats at ceremonial functions, such as Durbars. The Indian titles and honours and other rewards are conferred at his suggestion. Hence his influence is great. In the case of conflict between communities, his influence eases the situation. In the words of the Simon Commission Report: "It is not by virtue of his powers as District Magistrate alone that he can succeed; it is only because, as Collector, he has numerous sources of influence that can be brought to bear in the right quarter. If his range of influence were less varied he would find it more difficult to prevent trouble." As a result of the Reforms of 1919 the District Officer was relieved of some of his former duties, but on every one of the innumerable matters which may require the orders, assistance, advice or interference of Government, it is to him that Government as much as the ordinary citizens naturally look. The Reforms have increased his desk-work, hence he has not the time he had before for camping in the district, thus keeping himself in touch with the needs of the masses. The Marquess of Linlithgow intends to relieve him of a portion of his desk-work to enable him to be in close and constant touch with the villages, studying and administering to their wants.

## RELATION OF THE DISTRICT OFFICER TO THE PROVINCIAL ADMINISTRATION AS A WHOLE

For the purposes of administration every Province is composed of districts which, in all Provinces except Madras, are combined in groups of some four to eight called divisions. These divisions are in charge of Commissioners, who are generally senior members of the Indian Civil Service. They are intermediaries or links between the Collector, the head of a district, and the Provincial Government. They are not only supervisors; they have specific powers of their own. They act as courts of appeal in revenue cases. In some Provinces they exercise almost direct control over certain branches of district work, particularly in relation to local self-governing bodies. Public opinion regards them as unnecessary links in the administrative chain and demands the abolition of these posts on financial grounds. Against this demand it is urged that their expert advice and experience are necessary for the present.

## BOARDS OF REVENUE

Between the Commissioner and the Provincial Government in all Provinces except Bombay there is a Board of Revenue, or its equivalent, a financial commissioner. In their administrative capacity, these constitute the chief revenue authority of the Province and relieve the Provincial Government of much detail work. In their judicial capacity they form an Appellate Court for the increasing volume of revenue and often of rent suits. But for other purposes than revenue the Provincial Government deals chiefly with its Commissioners and Collectors. The

introduction of responsible government has naturally led to the transfer to the Provincial Government of some of the independent powers formerly exercised by the Board of Revenue.

### THE SECRETARIAT

A large part of Government business, including normally all communications with the general public, is done in the districts by the District and Departmental Officers who are constantly on tour within the districts. At headquarters the Provincial Government has a secretariat located in a single building. Here the Governor and all the ministers have their offices.

The "Department" is an administrative unit, separate from the secretariat, which reaches its apex in a single officer like the Inspector-General of Police outside the secretariat altogether. Such a head is concerned principally with a single secretary to the Government. Occasionally the head of a department is constituted a secretary to Government for the work of his department. The secretariat is, for the convenience of its own internal working, subdivided into departments. One or more of these departments are in charge of a secretary to the Government.

### SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS AND POWERS

There is no question of separating executive from civil judicial functions. In all Provinces, all civil suits are tried by judicial officers who have no direct connection with the executive or the police work in the country. The same is true of important criminal trials in the superior criminal courts: the High

Courts, the Chief Courts, the Courts of Judicial Commissioners and Courts of Sessions, presided over by judicial officers who have no executive authority. But minor criminal cases are still tried in all Provinces by officers who exercise executive and revenue functions.

The District Officer, the Assistant or Deputy Collector and the Mamlatdar are both executive and judicial officials—revenue collectors and magistrates. Shortly after the grant of *divani* in 1765, Warren Hastings placed the collection of revenue and the administration of justice in the hands of one officer, the Collector. Lord Cornwallis separated these two functions, but they were again combined in one person by Lord William Bentinck and this system has been continued with some modifications till to-day.

This union of executive and judicial functions in the person of the Collector and his subordinate magistracy is an anomaly to which strong objection is taken by Indian public opinion. It is regarded as a violation of the elementary principle of common law that the prosecutor should not also be a judge. It is conceded that a man who is trying a criminal should try him in a purely judicial spirit and should not be influenced by anxiety as to promotion or prospects. The reasonableness of this demand is admitted by the Government, but it is pointed out that there is a side of magisterial work which may be regarded as preventive rather than punitive, and that this is of great importance in India, where crime is unfortunately rife and where breaches of the peace may arise at any time. Under these circumstances the head of the district administration should be sufficiently

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well armed to be able to deal effectively with the danger of upheaval and outbreak. No doubt it is difficult to draw a precise line between what is preventive justice and what is purely judicial work. It is urged that such a separation will result in lowering the prestige and authority of the District Officer and that it will lead to an increase in expenditure. It is difficult to defend the existing system. Even the Government has conceded that with the improvement of the finances such a separation of executive and judicial functions is to be effected as soon as possible. This reform is very necessary and should be carried out promptly in the interest of justice as well as efficiency of administration.

## CHAPTER XVI

### THE VILLAGE ORGANISATION

"But the root facts of Indian village life remain and must be appreciated no less by the constitutional reformer than by the agricultural adviser."

REPORT OF SIMON COMMISSION

**IMPORTANCE OF VILLAGES**      Nine-tenths of India's population live in villages. Throughout the greater part of India the village constitutes the primary administrative unit. From the villages are built up the larger administrative units—the talukas or tahsils, the sub-divisions and the districts. It is therefore necessary to know how these villages are organised. For the understanding of the village organisation a general description of an Indian village is essential.

**DESCRIPTION OF A VILLAGE**      The typical Indian village has a central residential site and an open space for a pond and a cattle-stand. There is also a village *chavdi* or meeting-place. Generally there is a central village well. There is also a school in many villages and almost invariably there is a religious building, a temple, a shrine or a mosque. The mud (in some places brick) or bamboo houses of the villagers are huddled together on this central site. Stretching around this nucleus lie the village lands consisting of a cultivated area and in some villages grounds for grazing and wood-cutting. With the

increasing hunger for land the grounds for grazing and wood-cutting have disappeared. The cultivated area provides the means of livelihood to the villagers. The cultivator's house is in the village, and the fields he tills are scattered over the whole area of the village. Thus there is no visible link between the home of the individual cultivator and the fields he tills. In the south and the east the fields or agricultural holdings average about five acres, in other Provinces not more than half of them exceed this limit. In certain parts of India—in the greater part of Assam and on the west coast of the Madras Presidency—the village as described here does not exist and the people live in small collections of houses or in separate homesteads.

Most of these villages have not yet been touched by metalled roads or railways. Post offices are many miles apart and telegraph offices are still more distant from one another. But the rapid introduction and development of bus traffic in all parts of India is changing the life of the villagers. The whole country except in the north-west is dependent on the monsoon. All major agricultural operations are fixed and timed by the nature and distribution of the rains. Under the prevailing system of tillage, the small and scattered holdings do not furnish occupation for more than half the year.

In every village one finds some persons with a permanent title in land either as owners or tenants with occupancy rights. There are also agricultural labourers who actually cultivate the land. Some of them take fields on lease and cultivate them for themselves. We find members of depressed classes who are mainly engaged in crafts such as leather work or in tasks regarded as menial. Some of them work

in the fields only in times of pressure. The large majority of the cultivators live in debt to the village moneylender. In some villages there are skilled artisans—potters who supply earthen vessels, carpenters or ironsmiths who provide and repair the simple agricultural implements, ploughs, bullock gear and water-lifts. There are always one or two shops which supply the household requirements. The owners of these shops are also generally moneylenders. They purchase the village produce and constitute a commercial link between the village and the outside world.

The Indian villages formerly possessed a large degree of local autonomy which they maintained through centuries. When the British became the rulers of India they found these villages “small republics.” But this autonomy has now disappeared owing to the establishment of Civil and Criminal Courts, the present land revenue and police organisation, the increase of communications and the growth of individualism. The traditional self-sufficiency of the village is fast disappearing. The corporate life of the village based on common civic interest and common traditions is now only a thing of the past. Recently attempts have been made in various provinces to recreate the corporate life of the village through the Village Panchayats, but without much success.

#### THE TYPES OF VILLAGES

We have given a general and composite picture of Indian villages, which may be classified under two heads according to the system of assessment of land:—

##### (1). *The Rayotwari Village.*

The Rayotwari or separate village is the prevalent form outside Northern India. Here the revenue is

assessed on individual cultivators. The village government vests in the hereditary headman, Patel or Reddi, who is responsible for law and order and for the collection of the land revenue.

(2). *The Joint or Landlord Village.*

This type is prevalent in the United Provinces, the Punjab and the Frontier Province. Here the revenue is assessed on the village as a whole. There is a certain amount of collective responsibility among the landlords for the revenue. The village site is owned by the proprietary body. The waste land is allotted to the village. The village government was originally by the Panchayat—a body consisting of heads of senior families. Later on during the British rule a Lambardar or headman was appointed. In these villages the co-proprietors constitute a local oligarchy, with the bulk of the village population as tenants or labourers under them. Recently Panchayats have been established in these Provinces.

Apart from the recent attempts to establish village Panchayats in various Provinces, at present there is practically nothing really like a village organisation in which the villagers have a share and a voice.

The village is the lowest administrative unit and is administered by the agency of the village officials—the Patel, the accountant and the village watchman—persons bearing different titles in different provinces but representing the traditional organisation of village life.

**THE VILLAGE  
OFFICIALS**

To organise the life of the village and to collect taxes, the Government has provided in every village officials with varied responsibilities. They are:—

(1). *The Headman.*

The village headman is in charge of the village for all purposes of the Government. He is called the Patel

in Bombay, the Karnam in Madras, the Mukhia in the United Provinces and the Lambardar in the Punjab. He is responsible for everything of public interest in the village. All Government orders are communicated through him. He collects land revenue and sends it to the Taluka or Tahsil treasury. He maintains order in the village. He turns out persons of bad character from the village and reports to the police the occurrence of all crimes or disputes. He attends to the needs of the officials touring in the village. He records birth and deaths in the village. He is responsible for the health and sanitation of the village and for informing the Government of any contagious or infectious disease that may break out in his village.

(2). *The Village Accountant.*

He is called the Talati or Kulkarni in Bombay, the Patwari in other Provinces. He keeps the revenue accounts of the village. Generally he has three or four villages in his charge. He has to keep up-to-date all village records dealing with assessments, ownerships, tenancy, mortgages and boundaries.

(3). *The Village Watchman.*

He is the village policeman. In some villages there are two or more Chowkidars. They are called Vethias in Bombay, Talaris in Madras and Chowkidars in the Punjab. They act as messengers from the Patel or Accountant to the Taluka headquarters. They look after the safety of the village at night. They are paid five to eight rupees per month or are given some land free of land revenue.

## CHAPTER XVII

### LOCAL SELF-GOVERNMENT

"Local Self-Government in India in the sense of a representative organisation responsible to a body of electors, enjoying wide powers of administration and taxation, and functioning both as a school of training in responsibility and a vital link in the chain of organisms that make up the Government of the country, is a British creation."<sup>1</sup>

"Whatever 'educative' value is rightly attributed to representative government largely depends on development of local institutions."

HENRY SIDGWICK.

"Indeed, the progress of self-government in the provinces of India will depend on the growth not only of responsible Governments at the top, but also of local self-governing institutions from the bottom—from the village community or *panchayat* upwards. It is thus that the great mass of the Indian peasantry—constituting a vast majority of the people—can be trained in those qualities of responsible citizenship which may hereafter entitle them to the full Provincial franchise."

J. S. C. REPORT.

### BEGINNINGS OF MUNICIPAL GOVERNMENT

The earliest essays in Municipal Government in India were in the Presidency towns of Madras, Calcutta and Bombay. An order of the Court of Directors in 1687 enjoined the formation of a corporation composed of Europeans and Indian members of the City of Madras. This corporation did not survive. Under the Regulating Act, 1773, the Governor-General nominated the covenanted servants of the Company and other British inhabitants to be Justices

<sup>1</sup> Government of India. "Memorandum on the Development and working of Representative Institutions in the sphere of Local Government," vol. v, p. 1,056.

of the Peace. They were empowered to appoint scavengers for the cleansing of the streets of Calcutta, Madras and Bombay, to order the watching and repairing of the streets, to make assessments for these purposes and to grant licences for the sale of spirituous liquors. After several intermediate Acts, the municipal constitution of the three Presidency towns was entirely remodelled by a series of Acts. In 1856, a body corporate was established in Presidency towns under the style of Municipal Commissioners, composed of three salaried members of whom one was to be president. Except in Bombay, all the Commissioners were appointed by the Governor. In Bombay the president alone was appointed by the Government while the two other Commissioners were appointed by the Justices of the Peace. To these bodies large powers of assessing and collecting rates and of executing works of conservancy and general improvement were entrusted. Up to 1860, the three Presidency towns had been substantially subject to a uniform system of municipal administration. But henceforth the system diverged in accordance with the provincial legislative independence restored in 1861. The Calcutta Municipality was remodelled by the Bengal legislature in 1863 and again in 1876. The Bombay Municipality was remodelled by the Bombay legislature in 1865 and again in 1872. The Madras Municipality was remodelled by the Madras legislature in 1867 and again in 1876.

Outside the Presidency towns there was practically no attempt at municipal legislation before 1842. An Act passed in that year for Bengal, which was practically inoperative was followed in 1850 by an Act applying to the whole of British India. Under this

Act and subsequent Provincial Acts a large number of municipalities were formed in all Provinces. These Acts provided for the appointment of Commissioners to manage municipal affairs and authorised the levy of various taxes. But in most Provinces the Commissioners were nominated and from the point of view of self-government these Acts did not proceed far. It was only after 1870 that progress was made in self-government. Lord Mayo's Resolution, 1870, Government in their Resolution of 1870, introducing the system of provincial finance, referred to the necessity of taking further steps to bring local interest and supervision to bear on the management of funds devoted to education, sanitation, medical charity and local public works. New Municipal Acts were passed for the various Provinces between 1871 and 1874, which, among other things, extended the elective principle, but only in the Central Provinces was popular representation generally and successfully introduced.

LORD RIPON'S RESOLUTION, 1881      The Resolution of Lord Ripon's Government in 1881-82 is a very important landmark in the growth of local self-government in India. In accordance with the Resolution, Lord Ripon's Government issued orders which had the effect of greatly extending the principle of local self-government. Under the orders passed in 1881-82 the existing local committees were to be replaced by a system of Boards extending all over the country. The lowest administrative unit was to be small enough to secure local knowledge and interest on the part of each member of the Board, and the various minor Boards of the district were

to be under the control of a general district Board and to send delegates to the district council for the settlement of measures common to all. The non-official element was to preponderate, and the elective principle was to be recognised, while the resources and financial responsibilities of the Boards were to be increased by transferring items of provincial revenue and expenditure. The Resolution advocated the establishment of a network of local self-government institutions specially to meet the needs of rural areas, the reduction of the official element in local bodies to not more than a third of the whole, and the exercise of control from without and not from within, a large measure of financial decentralisation and the adoption of election as a means of constituting local bodies wherever possible. While insisting on a unity in aim, it favoured a variety in forms to suit divergent conditions. The outcome of the Resolution was a series of Provincial Acts providing for the election of members of municipal bodies to the number of half or more in each case, and for the grant to them of the privilege in many cases of electing their chairman or vice-chairman. Provinces proceeded to develop on their own lines in accordance with local conditions. But despite the variety in details, there was in all Provinces a substantial agreement as to the general line of the development of rural local self-government. In all rural boards taxpayers were empowered to elect a proportion of their members, and in some to elect their presidents. In the large majority of these the District Officer continued to be chairman in charge of the executive control till 1918. In spite of the Resolution of Lord Ripon's Government, owing to the all-pervasive official control

in practice, the inadequacy of financial resources and the general indifference of the people, no real and substantial progress was made in the art of local self-government. In the vast majority of districts, local government continued to be one of the many functions of the District Officer. No real attempt was made to inaugurate a separate system amenable to the will of local inhabitants. In many towns the municipalities continued to confine their activities to approving the decisions of the official chairman; where the duties were entrusted to the vice-chairman he merely followed the instructions of the official. In the words of the Report of the Simon Commission: "In effect, outside a few municipalities, there was in India nothing that we should recognise as local self-government of the British type, before the era of Reforms."

After the ultimate aim of British rule in India was laid down in the Declaration of August 20, 1917, the Executive Government made substantial efforts to arouse local institutions from their slumber. In 1918, Lord Chelmsford's Government issued an im-

portant Resolution whose basic principle was that "Responsible institutions will not be stably rooted until they are broad-based and that the best school of political education is the intelligent exercise of the vote and the efficient use of administrative power in the field of local self-government." It affirmed that the general policy should be one of gradually removing all unnecessary control and differentiating between the spheres of action appropriate for governmental and for local institutions. It formulated certain principles calculated to establish

LORD CHELMSFORD'S  
RESOLUTION OF 1918

wherever possible complete popular control over local bodies. It suggested an elected majority in all local boards, the replacement of official chairmen by elected non-officials in municipalities and where possible in rural bodies, the lowering of the franchise to an extent to make constituencies really representative of taxpayers, and the representation of minorities by nomination. The Decentralisation Commission of 1908 had pointed out the advisability of fostering village government. The Government of India had laid down certain guiding principles for the purpose but no action was taken. The Resolution of 1918 laid fresh emphasis on the advisability of developing the corporate life of the village as a step in the growth of self-governing institutions by taking advantage of the existing bonds of common civic interest and common traditions. The immediate action taken on this Resolution was to relieve the District Officer of his duty as a chairman of the district board in all provinces except in the Punjab.

The Montagu-Chelmsford Report recognised the defects of the system and stated that throughout the educative principle was subordinated to the desire for immediate results. It also insisted on the invaluable training which the exercise of local self-government affords to the citizens. The authors of the Report laid down a definite formula that there should be as far as possible complete popular control in local bodies and the largest possible independence for them of outside control.

#### LOCAL SELF-GOVERNMENT UNDER THE REFORMS OF 1919

All the institutions of local self-government in India derived new life from the introduction of the

constitutional reforms. Under the Act of 1919, local self-government was transferred to ministers who became responsible to the legislatures for the development of local bodies. In almost every Province the legislature used its powers in the endeavour to make local bodies a more effective training-ground for larger and wider political responsibility. The general trend of these Acts was the same. Almost all aimed at lowering the franchise, increasing the elected element to the extent of making it the immediate arbiter of policy in local affairs, and at passing executive direction into non-official hands, and organising village self-government. In short, these Acts aimed at freeing these bodies from official control and making them responsible to a substantially enlarged electorate.

#### THE EXISTING SYSTEM OF LOCAL SELF-GOVERNMENT IN BRITISH INDIA

It is not possible for the Provincial Government to look after and provide for all the local requirements of various localities. Firstly, the Government has no time for this work. Secondly, the local authorities have special advantages of knowing the local conditions and meeting their wants, which at times vary largely from locality to locality. Local self-government provides a solution for this problem and affords a training-ground for budding politicians.

Local self-government in British India is entrusted to four different kinds of organisations: (1) Municipalities in Presidency towns and other towns (2) Local Boards in rural areas (3) Village Panchayats in villages and (4) Port Trusts in important ports.

## I. Municipalities

### THE EXISTING SYSTEM IN PRESIDENCY TOWNS

The unit of self-government in urban areas is the municipality. The Corporations of Calcutta, Bombay and Madras have been constituted each under its separate Act and each with its own specific powers and privileges.

### THE CORPORATION OF CALCUTTA

The Corporation of Calcutta consists of ninety-one councillors. Of the ninety-one members, ten are nominated by the Government and eighty-one are elected; of these sixty-three are elected by the Wards, six by the Bengal Chamber of Commerce, four by Calcutta Trades' Associations, two by the Commissioners for the Port of Calcutta, and five aldermen elected by the nominated and elected councillors. Of the elected eighty-one seats twenty-one are reserved for Muhammadans. The Mayor is appointed by the corporation. The commissioner, who is the chief executive officer, is also appointed by the corporation. Thus the whole municipal administration is under the control of the corporation.

### THE CORPORATION OF BOMBAY

The Municipal Corporation of Bombay consists of one hundred and six members. Of the one hundred and six, sixteen are nominated by the Government and ninety are elected; seventy-six by Wards, one by the Bombay Chamber of Commerce, one by the Indian Merchants' Chamber, one by the Bombay Millowners' Association, one by the Bombay University, and ten are co-opted by the ninety-six elected and nominated members. Provision is made to secure the representation of industrial

labour also. The councillors elect their president called the Mayor. By convention the Mayor is elected in turn from the Hindu, the Muhammadan, the Parsi and the European communities. The municipal commissioner, who is the chief executive officer, is appointed by the Government and he is generally a senior member of the Indian Civil Service.

**THE CORPORATION  
OF MADRAS**

The Municipal Corporation of Madras consists of sixty-five councillors; forty-five are elected at divisional elections, six by the Madras Trades' Associations, five by the South Indian Chamber of Commerce and one by the Anglo-Indian Association, one by the Trustees of the Port of Madras, one by the University of Madras, and five are co-opted, of whom one is a woman. The President is elected by the corporation, whilst the municipal commissioner, who is the chief executive officer, is appointed by the Government and is generally a senior member of the Indian Civil Service.

Thus the councillors, who vary in number from one hundred and six in Bombay to sixty-five in Madras, are, with the exception of a small number of Government nominees, elected on a fairly wide franchise varying from ten per cent of the population in Bombay to five per cent in Madras.

These cities enjoy a considerable measure of freedom in the administration of their municipal affairs. The Provincial Governments have reserved certain powers of control in relation to appointments, contracts, raising loans and the audit of accounts.

The Corporation of Bombay has an annual income of over three crores, that of Calcutta over two crores of rupees and that of Madras sixty-seven lakhs of rupees.

## OTHER MUNICIPALITIES

There are 728 other municipalities in British India,<sup>1</sup> varying in size from cities like Ahmedabad with a quarter of a million inhabitants to small towns with a few thousands of inhabitants, and with something over twenty-one million people resident within their limits. During recent years qualifications for voters have been lowered in every Province. Generally speaking fourteen per cent of the urban population enjoys municipal franchise. In every municipality the majority of the members are elected. The proportion of the elected members varies from Province to Province.

In Bombay Presidency the Bombay Municipal Boroughs Act of 1925 provides an adequate basis for municipal administration in the larger cities. The larger municipalities are styled Municipal Boroughs, which are now twenty-nine in number. The Act has extended municipal franchise to occupiers of dwellings or buildings with an annual rental charge of Rs. 12.

FUNCTIONS OF  
MUNICIPALITIES

The functions of the municipalities are of two kinds (1) Obligatory (2) Optional. All municipalities have to perform the obligatory functions, whilst the nature and extent of the optional functions depend upon the funds available for them. These functions are classed under the heads of public safety, health, convenience and instruction. The most important of the obligatory functions are: lighting, watering and cleansing of public streets, extinguishing fires, water supply, removing obstruction, naming streets, registering births and deaths, public vaccination, maintaining public hospitals, and

<sup>1</sup> Burma is excluded.

dispensaries and providing medical relief, maintaining primary schools, providing special medical aid and accommodation for the sick in time of the outbreak of dangerous diseases and adopting measures to suppress and prevent the recurrence of the diseases. The most important of the optional functions are constructing and maintaining public parks, gardens, libraries, museums, lunatic asylums, halls, dharamshalas and guest-houses, planting and maintaining road-side and other trees, taking a census and making a survey.

The Provincial Governments possess little control over the details of administration, but they have the ultimate power of superseding, suspending or abolishing a municipal council. The Government has also the power of regulating the proportion of elected to non-elected members in the council. It can also require the appointment and prescribe the terms of service of the health officer or engineer. Grant of a salary to a chairman requires the approval of the Government.

#### MUNICIPAL FINANCE

Municipalities are given wide choice in the form of taxes which they may levy. Octroi duties, terminal taxes, taxes on personal income, fixed property, professions and vehicles, have all been utilised for particular services, such as education and water supply. There are also special taxes and cesses imposed in many municipalities. In financial matters the municipalities have full freedom and the Government's control is limited generally to cases in which the interests of the general public call for special protection. The Government has the right to alter a municipal budget, if it considers that due provision has not been made for loan charges and for the main-

tenance of the working balance. It may also intervene in the administration by way of preventing or initiating action in matters affecting human life, health, safety or public tranquillity.

The total income of all municipalities is more than seventeen crores of rupees, derived principally from taxation, contributions from provincial revenues and other sources.

**CANTONMENTS** In large cities areas where troops are stationed are outside the administrative limits of the municipalities. They are called cantonments and are administered by elected cantonment boards with official presidents. The final control of cantonment administration rests with the Army Department of the Government of India.

## II. Rural Authorities

### **DISTRICT BOARDS**

The duties and functions assigned to the municipalities in urban areas are in rural areas entrusted to district and local boards. The system of rural self-government in various Provinces differs widely. In all Provinces except Assam the most important unit of self-government is the district board, whose jurisdiction is conterminous with the district. The majority of the members are elected on a wide franchise which gives votes to a little more than 3.2 per cent of the population. Communal electorates for Muhammadans are provided in Bombay Presidency and the United Provinces for district boards and in Assam for local boards. Elsewhere the power of nomination is used by the Government to secure representation for minorities. Almost everywhere the

chairman is an elected member except in the Punjab, where the boards have the option of having an elected chairman.

**FUNCTIONS** The functions of the district boards are much the same as those of the municipalities, allowing for different conditions of town and country. The Government has the same power of control and intervention as those in case of municipalities. In Madras, the boards have power to construct and manage light railways, and the Tanjore board actually operates one hundred and thirty-four miles of railways.

**TALUKA BOARD** Within the area of the district board are minor authorities varying in names, functions and composition from Province to Province. The taluka or circle boards exist in all Provinces except in the Punjab and the United Provinces. In Bengal, Madras and Orissa they are called union committees. It has jurisdiction over a taluka, and is a subordinate agency of the district board. It is composed in the main of elected members and as a rule it chooses its own chairman. Generally the elected members of the district board are chosen by the members of the taluka boards. Throughout British India there are two hundred and seven district boards with five hundred and eighty-four subordinate boards, besides four hundred and thirty-five union panchayats.

**FINANCES OF THE RURAL AUTHORITIES** The main source of revenue of rural authorities is a tax or cess on the annual value of land and is collected with the land revenue. This is often supplemented by taxes on professional men and by tolls on vehicles. A very large

proportion of the revenue consists of subventions or grants from the Provincial Governments. They are given grants in aid of particular services and also in the form of capital sums for the construction of works. The total income of the boards is over eleven and a half crores of rupees. The principal objects of expenditure are education, civil works, such as roads, bridges, tanks, and medical relief.

### III. Village Panchayats

The Decentralisation Commission, 1908, recommended that with a view to making the village the basis of the system of local self-government an attempt should be made to constitute and develop village councils, to which the time-honoured title of "Panchayats" might be applied, for the administration of village affairs. In accordance with these recommendations village panchayats were set up in the Punjab in 1912 and subsequently in the United Provinces. Since 1919 they have been set up to a greater or less extent in all Provinces under special Village Panchayat Acts.

The village panchayat or union board is an attempt to recreate the village as a unit of self-government. It has jurisdiction over a village or a group of villages. Its primary function is to look after such matters as wells and sanitation. It is sometimes entrusted with the care of minor roads and management of schools and dispensaries, and in Madras of village forests and irrigation works. In some Provinces it has also been given power to deal with petty criminal and civil cases.

Except in the United Provinces, the members are

almost entirely elected. In Madras, Bombay and Assam all male adults and in the Central Provinces all adults in the village have the vote. Voting is often by show of hands.

With all the efforts of the Government officials to establish village panchayats the progress is very slow. However, the development is promising in the United Provinces, Bengal and Madras. Outside these three Provinces the movement is still in its infancy. It is very far from certain that it will eventually be possible to create satisfactory village panchayats over all the areas of all the provinces.

The villages have lost their organic unity and vitality under the pressure of the British revenue, judicial and police administration during the last hundred years. Want of adequate funds for their work and the unwillingness of the villagers to provide them are obstacles to their progress. In some cases the necessary intelligence, integrity, character and literacy are wanting. Many villages are entirely apathetic. Some are dominated by the influence of powerful landlords, communal feelings and caste and communal friction. It may be stated that the experiment has not yet met with success.

#### IV. Port Trusts

The management of the important ports: Bombay, Calcutta, Madras and Karachi is entrusted to the boards of commissioners for these ports. They have adequate financial resources and full control over the management of these ports. Under the New Constitution all major ports in India including the Port of Bombay are to be transferred to the Government of India.

## CONCLUSION

The progress of local self-government institutions has not been as satisfactory as one would have expected since the time of Lord Ripon. During recent years their working presents a picture of neither unrelieved failure nor unqualified success. There are glaring abuses as well as brilliant successes.

The importance of the development and the successful working of these institutions can hardly be exaggerated. Now that the official control is removed they ought to develop on healthy lines. But there are some difficulties in the way. Firstly, the size of an average district, which is normally the unit in rural areas, is very large. Secondly, they have no efficient and trained staff. Thirdly, their resources are limited. Fourthly, the calibre of the members is not up to expectation, hence at times there is abuse of power. Fifthly, the importation of communal and sectional differences into the affairs of local bodies, and lastly, the apathy of the voters whose sense of civic duty is neither quickened nor developed. The real solution lies in remedying these defects.

## CHAPTER XVIII

### LAND REVENUE

"Land Revenue remains one of the two main props of Indian finance."

"Both the landlord and the peasant interests, however, are united in resisting any increase of land revenue."

W. T. LAYTON.

IMPORTANCE  
OF LAND  
REVENUE

India is predominately agricultural. Seventy-three per cent of her population are dependent for their livelihood on agriculture and ninety per cent of her population is rural. Again, land revenue has always been the mainstay of the Indian fiscal system. In 1934-35, out of the total provincial revenues of eighty-nine crores of rupees, land revenue was approximately thirty crores or one-third of the provincial revenues. Thus the land revenue system and the rules regarding land tenures are matters of immediate and vital interest both to the vast majority of the population and the Provincial Governments.

#### I. Historical

The land revenue of modern India is a form of public income derived from immemorial custom of the country. According to Manu the main source of State revenue was a share of the gross produce of all land varying according to the soil and the amount of labour devoted to it. In its primary shape it was that portion of the cultivator's grain-heap that the State took for public

use. During the Hindu period the actual portion taken by the State was between one-tenth and one-sixth in normal times, rising to one-fourth in war times.

India has been a land of innumerable villages. Each village community had its own territory and its own land administration under a headman. The headman was responsible to the King for the revenue to be provided from the village for the year and he apportioned the amount amongst the villagers. The share of the State was set aside by the headman before the general distribution. Between the village headman and the King was a chain of officials whose principal duty was the collection and administration of land revenue. This system in all its essentials continued till the reign of Akbar. Todermall, the Finance Minister of Akbar, placed the whole land revenue administration on a sound and scientific basis. He had the land measured carefully and then divided into four classes according to the fertility of the soil. The Government share, which was fixed at one-third of the gross produce, was commuted into money with reference to the prices of the previous nineteen years. Many characteristics of the present land revenue system have their origin in his system. On the dissolution of the Mogul Empire, the collection of land revenue became practically little more than a disorganised scramble for the greatest amount of income that could be wrung from the land.

Such was the heritage to which the East India Company succeeded when, in 1765, it assumed the *divani* (revenue administration) of Bengal, Bihar and Orissa under the authority of the Mogul Emperor. The main source of the State income in these provinces at

that time was the land revenue, which was collected by the Zamindars, who were the principal intermediaries between the Government and the cultivators. Originally merely collectors of revenue, these functionaries had, during the decline of the Mogul Empire, established a hereditary connection with the land and had acquired a status far superior to that of a revenue agent. After the failure of several experimental schemes, the Company decided in 1793 to accept the recommendation of Lord Cornwallis that the land revenue to be paid by the Zamindars should be fixed permanently, the amount to be determined on the basis of the actual collections of previous years. Hence arose, so far as the area then involved was concerned, the "Permanent Settlement" of land revenue which still survives within those limits, but which was not extended to other areas. As other Provinces came under British control, their assessments were gradually reduced to order, the systems selected being at first tentatively adopted according to the varying circumstances of the different tracts and becoming more and more crystallised as time went on. Thus a number of different systems were evolved on lines that were for the most part mutually independent. The complications of Indian land tenures are thus rooted in their history.

#### CLASSIFICATION OF LAND TENURES

Land tenures or systems of land assessment and collection in British India are usually classified on a twofold basis. Firstly, they are classified as Zamindari and Ryotwari tenures. This differentiation is broadly according to the status of the person from whom revenue is actually demanded. When the revenue is

assessed on and demanded from an individual or community owning an estate and occupying a portion identical with or analogous to that of a landlord or Zamindar, the assessment is known as Zamindari. When the revenue is assessed on and demanded from individuals who are actual occupants—rayots, or are accepted as representing the actual occupants of small holdings, the assessment is known as Rayotwari. In the Rayotwari areas the Government deals direct with the cultivators and discharges some of the functions of a landlord. Under the Zamindari system the land is held by the Zamindars in a right of occupancy which is both heritable and transferable. Under either system there may be rent-paying sub-tenants. The Zamindari or landlord system prevails in Bengal, Bihar and Orissa, the United Provinces, the Punjab (proprietary cultivating communities) and the Central Provinces; over rather more than a half of British India altogether. The Rayotwari or the peasant proprietary system prevails in Bombay, Madras, Assam and Sind.

Secondly, we have the distinction between the areas in which the assessment is permanently fixed and those in which it is fixed for a period of years only. In 1793, as has already been explained, the assessment in Bengal was declared to be fixed in perpetuity, and the settlement then made, with some subsequent additions, constitutes the permanent settlement of Bengal. Shortly afterwards, the permanent settlement was extended to the Benares District in the United Provinces and to certain portions of Madras Presidency. Thus in Bengal and Bihar, a fourth part of the Madras Presidency, and one district of the United Provinces, making up altogether about one-fifth of British India,

the Government has recognised the proprietary rights of the Zamindars and fixed the assessment permanently. In the remaining areas: the United Provinces, the Punjab, the Central Provinces, Bombay, Madras, Assam and Sind, assessments are fixed for a period of years and are subject to periodic revisions. The ordinary term of assessment is thirty years in the United Provinces, Bombay and Madras, and twenty years in the Punjab and the Central Provinces. In a backward tract such as Assam, and in exceptional circumstances such as exist in Sind, shorter terms have hitherto been permitted, but now the twenty years' period is adopted in Assam.

#### PERMANENT SETTLEMENT, ITS NATURE AND OPERATION

The *divani* of Bengal was conferred upon the East India Company in 1765, but at first the native system of government was left without any interference. In 1772 Warren Hastings was appointed with express orders to manage the revenue by the direct agency of the Company's servants. His first measure was to grant a lease of the land revenue for five years at the amount already fixed, with the intention of conducting in the meantime an elaborate inquiry into the resources of the country. This inquiry was never carried out. When the five years' lease expired in 1777 it was renewed on the best terms available until the Decennial Settlement of Lord Cornwallis in 1789. Lord Cornwallis had received instructions from the Court of Directors to make a settlement for ten years, with a view to its being ultimately fixed in perpetuity. The Decennial Settlement, as it was called at first, was made in 1789 and declared permanent by the authority of the Court of Directors in 1793.

ITS NATURE AND  
OPERATION

This arrangement was effected by the Bengal Permanent Settlement Regulation of 1793, under which the Zamindars were declared proprietors of the areas over which the revenue collections extended, subject to the payment of the land revenue and so to the liability to have their lands sold for failure of payments. The assessment fixed on the land was declared to be unalterable for ever and the Government specifically undertook not to make any demand on the Zamindars or their heirs or successors "for augmentation of the public assessment in consequence of the improvement of their respective estates." It was fixed at approximately ten-elevenths of what the Zamindars received from the cultivators by way of rent, the remaining one-eleventh being left as the return for their trouble and their responsibility. In the early years of settlement there were many defaults in payments and a large number of estates were put up for sale. With the growth of security under British rule the value of the land and its produce rose, waste lands which had not been assessed to revenue were brought under the plough and the assessment became proportionately light.

The results of the Permanent Settlement have been remarkable. It is claimed that it has created a landlord class (leisured class) which has developed India's culture, and that it has resulted in the accumulation of capital and improvement of land. It is urged that it has insured the people against the evils of famines and that it has created vested interests whose loyalty stood the test in 1857. On the other hand it is pointed out that the amount paid by the Zamindar to the Government by way of land revenue represents a very

small portion of what he gets by way of rent from the tenants. The value of agricultural land and produce has largely increased as compared with that in 1793, and the whole benefit of this great increase has gone into the pockets of the Zamindars, depriving the exchequer of a large sum which would have been available by way of taxation. In short, the Zamindars pocket the whole of the unearned income from the land. Moreover, there are a large number of intermediaries between the Zamindars and the cultivators, and none of them pays either land revenue or income tax. The indirect benefits claimed for the Permanent Settlement are of doubtful value. At the end of the last century Mr. R. C. Dutt and other respected officers of the Indian Civil Service pleaded for the extension of the Permanent Settlement in other Provinces on the ground that it gives protection against the evils and consequences of famines and that it leads to the prosperity of the agriculturists, but the claim and the demand were negatived by Lord Curzon in a resolution dealing exhaustively with the whole land revenue policy of Government in British India.

Public opinion in India favours abolition of the Permanent Settlement. The Zamindars are characterised by the Socialists as parasites and reactionaries. The Government considers any alteration of the system as a breach of promise. Under the New Constitution, with full responsible government in the Provinces, one will not be surprised if, under financial pressure, serious attempts are made to modify the system. It is urged that the whole system after eliminating the Zamindars should be reorganised on the same basis as the income tax.

It is for the Bengal legislature to deal with the question.<sup>1</sup>

#### LAND REVENUE SYSTEMS IN OTHER PROVINCES THE RAYOTWARI SYSTEM

**MADRAS** When the British succeeded to the territories of the Nawab of the Carnatic in the beginning of the nineteenth century the question arose as to the system on which the land revenue of the province should be assessed. The Court of Directors, influenced by the low cost of the collection and the punctuality of payment of revenue in Bengal, directed the Madras Government to enter into permanent engagements with Zamindars, and where no such Zamindars existed to create substitutes out of the enterprising contractors. Indeed, as late as 1862 the introduction of permanent settlement in all parts of India was seriously contemplated and it was not until 1883 that the proposal was finally abandoned. Except in the north and the extreme south of the Madras Presidency, where the Zamindars happened to be the descendants of representatives of ancient lines of powerful chiefs, the experiment proved a disastrous failure. Hence the system of Rayotwari Settlement was, after considerable discussion, introduced by Sir Thomas Munro. The distinguishing feature of this system is that the Government deals direct with the rayot or cultivating proprietor and that the rayot is at liberty to relinquish a part of his holding or, subject to certain conditions, to add to it by taking up waste land when opportunities arise. It must not be imagined, however, that the

<sup>1</sup> But a Bill altering the character of the Permanent Settlement passed by the Provincial Legislature must be reserved by the Governor-General for the assent of His Majesty and it does not become law till His Majesty has signified his assent to it.

Rayotwari system prevents sub-letting and the creation of intermediate tenancies. With the enormous increase of land value sub-letting has become common. The assessment under this system is fixed on the land and is paid by the cultivating proprietor for the time being. The settlement is revised ordinarily once in thirty years.

**BOMBAY** In Bombay, when the British acquired the territories from the Peshwas, the system of farming the revenue was in force. The office of Mamlatdar, who was the collector of land revenue, was sold by auction. The Mamlatdar in his turn let his district out at an enhanced rate to under-farmers, who repeated these operations till they reached the Patels. This resulted in great oppression. When the administration passed into the hands of the British farming was abolished. The revenue varied according to cultivation and the assessments were made lighter. After some experiments by Pringle and Goldsmid the Rayotwari system on the Madras model was ultimately adopted in the whole Presidency.

**THE UNITED  
PROVINCES AND  
THE PUNJAB**

When the British came into possession of the North-Western Provinces they were confronted with the difficult problem of land assessment. In Oudh there were many petty *rajās* who had been allowed to contract for a sum of revenue and given the name of Talukdars. Elsewhere there were a few *rajās* who had become revenue Zamindars. In the rest of the Provinces there were bodies of villagers claiming descent from chiefs or other notables who had founded particular villages or obtained them on grant, and who laid claim to the

whole village areas. The Government recognised the landlord rights of these bodies and made them jointly and severally liable for the revenue to be paid. In the Punjab the same system of village or Mahal settlement was adopted but on a slightly different plan. All these settlements were made liable to periodical revision, except in the case of the Benares District in the United Provinces, which was permanently settled.

#### THE CENTRAL PROVINCES

The British found that in the Central Provinces the villages represented the aggregate of cultivators each claiming his own holding and nothing more. Under the Marathas the revenues of the villages were farmed out to individuals called Patels or Malguzars. These men had in course of time acquired a quasi-proprietary position. When the British came into possession of this territory they were made proprietors and became responsible for the payment of the revenue. The settlement is known as the Malguzari and is liable to periodical revision.

### GENERAL FEATURES OF LAND REVENUE

#### ADMINISTRATION

The general features of land revenue administration, whether Zamindari or Rayotwari, may be noted under three heads: (1) the preparation of the cadastral record, (2) the assessment of revenue and (3) the collection of revenue assessed. The processes coming under the first two heads are known collectively in most Provinces as "the Settlement" of land revenue, and the officer who carries them out is known as the Settlement Officer. Each Province has a land record staff which keeps the village maps and records up to

date and preserves the survey boundary marks. The duties of the assessing staff involve a minute local inspection from village to village in large tracts of territories.

#### THE CADASTRAL RECORD AND THE RECORD OF RIGHTS

An essential preliminary to the assessment of land is the preparation of a cadastral map. Except in Bengal, in all Provinces the existing assessments are based almost without exception on a field-to-field survey. A separate map is prepared for each village. The cadastral map having been completed, the record of holdings is drawn up. This is primarily a fiscal record, the object of which is to show from whom the assessment of each holding is to be realised in each case. There are also entries showing the existing rights in and the encumbrances on the land.

#### PRINCIPLES OF THE ASSESSMENT OF LAND REVENUE

The revenue is levied by means of a cash demand on each unit assessed. Under the Zamindari system the demand is assessed on the village or estate, which may be owned by a single proprietor, or by a proprietary body of co-sharers, jointly responsible for payment of the revenue. The demand is for a definite sum payable either in perpetuity or for a fixed term of years, during which the whole of any increase in profit due to extension of cultivation, enhancement of rent, etc., is enjoyed by the individual landlord or by the proprietary body. In the United Provinces, the Punjab and the Central Provinces, the Government demand is theoretically based on an economic rent, but actually it takes many other factors into consideration. In

practice the basis of assessment is much less than the economic rent on account of the operation of tenancy laws. This demand is half of the net rent and it is known as a half-rental rule.

Under the Rayotwari system the assessment is on each field as demarcated by the cadastral survey. It takes the form of revenue rates on different classes of land which are settled for a term of years, and as the occupant may surrender any portion of the holding or obtain an unoccupied field the total sum payable by him as revenue may vary. In the case of Madras, the assessment is based on net produce, i.e., the gross produce minus the cost of cultivation. In Madras the cost of cultivation is calculated on the assumption that all labour is hired and includes an allowance for the labour of the cultivator and his family. In Bombay the rate of assessment is arrived at empirically, with reference to general economic considerations, and in practice is based on the actual rents paid rather than on any theoretical calculation of the net produce.

For British India as a whole it may be said that the standard share of the calculated land rent or produce taken by the Government is approximately one-half, but the share actually taken is more frequently below than above one-half.

#### COLLECTION OF LAND REVENUE

Land revenue is the first charge on the produce of the soil. It is collected every year in two instalments, one in January and the other in March. If there is a default in the payment of an instalment by a particular date, the cultivator has to pay after the receipt of notice an extra 25 per cent of the instalment by way of penalty, and if he fails to pay that his land

is generally forfeited. A cultivator may relinquish his holding if he cannot cultivate it to his advantage, after giving due notice to the Government. There is a well organised machinery for the collection of land revenue, beginning with the Patel, the Mamlatdar, the Assistant Collector, the Collector and ending with the Commissioner. In fact the whole administrative machinery in British India is primarily devised for the collection and administration of land revenue.

#### EXEMPTION FROM LAND REVENUE

In all Provinces provision is made for exempting from assessment, either permanently or for a term of years, increase of income due to improvements such as wells, tanks and embankments made by private individuals. Favourable revenue terms are given to cultivators to take up and clear waste lands. Provision is also made for the avoidance of sudden enhancement of the land revenue demand and for the relief from over-assessment of holdings which have suffered deterioration since they were assessed.

#### SUSPENSIONS AND REMISSIONS

In areas that are under a fixed assessment, although the demand represents an amount fairly payable on an average, experience has shown that the agriculturists cannot be counted to lay by in good seasons enough to meet the revenue demand in very bad years. Hence it has been customary with the Government in all Provinces, as necessity arises, to suspend the demand for either the whole or part of the land revenue for a year, and in cases where ultimate recovery would entail real hardship to allow an absolute remission of the demand. Suspensions and remissions of

land revenue are made when crops fail owing to the failure of the monsoon or destruction by locusts or any other calamity.

#### TENANCY LEGISLATION

When the settlement with the Zamindars of Bengal was made permanent, it was the intention of the Court of Directors that the interests of the tenants should be safeguarded. The Regulation of 1793, however, did not define clearly the rights of the tenant, and so far from conferring any security of tenure upon him the subsequent Regulations of 1799 and 1812 placed the tenant practically at the mercy of the landlord. His property was rendered liable to distraint and his person to imprisonment if he failed to pay his rent, however extortionate it might be. It was only in 1859 that an Act was passed restricting the landlords' powers of enhancement in certain cases. Later on, under the Bengal Tenancy Act of 1885 which has served as a basis for tenancy legislation throughout India, certain privileged classes of tenants were created. Tenancy legislation has been extended to all Provinces on the same lines as in Bengal. In the United Provinces, the Punjab and the Central Provinces, the tenancy rights are secured under special Acts. Laws have also been passed which have made the petty occupiers of Madras, Bombay and Assam proprietors of their holdings subject to the payment of a moderate land revenue, and protecting them against future enhancement of land revenue on account of improvements effected by them. Thus in all Provinces tenancy rights have been secured to the occupiers of land of any standing, prohibiting eviction or enhancement of rent save by

consent or by decree of court on good cause shown and granting the rayot power to defend his tenant rights. In short, tenancy legislation has secured to the tenants the three Fs: Fixity of tenure, Fair rent and Freedom of sale.

#### NATURE AND BURDEN OF LAND REVENUE

Except in the permanently settled Zamindari areas, where the proprietary rights of the Zamindars are recognised, the Government is the landlord in the whole of British India. Land revenue is partly in the nature of a tax and partly a rent. It is urged that the burden of the land revenue on the peasantry is very heavy and that it is mainly responsible for the poverty of the agriculturists. Dispassionately, land revenue taken as a portion of the value of the produce of a holding or land may not be very heavy, but having regard to the number of persons dependent on an individual holding or land and the absence of any alternative means of livelihood, its burden has become heavy. It is urged that land revenue should be placed on the same basis as income tax—the minimum limit may be kept as low as Rs. 500 instead of Rs. 2,000 as in the case of income tax. Having regard to the fact that the vast majority of the agriculturists have very small holdings and that their income is much less than Rs. 500, such a change will deprive the Provincial Governments of a very substantial revenue; hence under the existing circumstances such a change is considered impracticable. It is generally agreed that the land revenue administration requires revision with a view to putting it on a more equitable basis, but the financial position of the Provinces is not very encouraging for such a reform. With full provincial autonomy under

the New Constitution some changes in this direction are not unlikely. Land revenue will receive the immediate consideration of the new provincial legislatures.

There is also a growing demand on the part of the Socialists for the elimination of the Zamindars. Attempts for the alteration of the Zamindari system may be made in provincial legislatures in the near future.

## CHAPTER XIX

### EDUCATION

"Literacy is increasing, but a literate India is still a long way off."

J. S. C. REPORT.

"The national and public life of India began with the spread of English."

SIR STANLEY REED AND P. R. CADELL: *India—The New Phase*.

"Public education in British India has from the beginning been developed on wrong lines. Those who take this view contend that Western methods and objectives have precluded the growth of an indigenous culture expressive of, and responsive to, the different types of native genius, and ask whether a reorientation of the whole educational system is not required in the figurative and the literal sense of the word."

REPORT OF THE INDIAN STATUTORY COMMISSION.

#### I. Historical

**BEGINNINGS** When the British acquired political power in India they found systems of education of great antiquity existing both among Hindus and Muhammadans, in each case closely bound up with the religious institutions. Pandits gave instruction in Sanskrit to Hindu youths of higher caste. For the lower classes indigenous village schools were scattered over the whole country where rudimentary education was given to the children of traders and cultivators. For the education of Muhammadans Moulvis were attached to shrines and mosques and supported by State grants in cash or land or by private liberality. At first the British rulers left the traditional modes of instruction

undisturbed and respected the endowments made by Indian rulers. Warren Hastings established a Muhammadan College at Calcutta in 1781. The British Resident at Benares established a Sanskrit College there in 1792. Parliament, under the influence of men like William Wilberforce, inserted a clause in the Charter Act of 1813 to secure that the Governor-General in Council should set apart "a sum not less than one lac of rupees each year, for the encouragement of education in British India." This sum was for some time applied to the encouragement of Oriental methods of instruction by paying stipends to students. In the meanwhile, knowledge of English became a means of livelihood to natives at the centres of government, hence a demand arose for English instruction in the Presidency towns. Missionaries and philanthropic bodies favoured education through the vernaculars. Then followed the famous controversy between the "Anglicists" and the "Orientalists" as to the direction in which the money available should be spent. The Anglicists urged that all instruction of a higher kind should be given through the English language, whilst the Orientalists insisted on maintaining the study of the Oriental classics in accordance with the methods indigenous to the country. To settle the controversy the Government appointed a Committee of Public Instruction. Among the Orientalists were many distinguished officers of Government, and their view prevailed for some time. Macaulay, who was appointed the Law Member, was also appointed chairman of the Committee in 1833. When in 1835 the two parties were so evenly balanced that things had come to a deadlock, it was Macaulay's advocacy of English education that turned the scale against the

Orientalists. It is true that his famous minute forced the decision in favour of English, but other forces, represented by Raja Ram Mohan Roy and others, also helped him. Macaulay's minute was immediately followed by a resolution of the Governor-General which plainly declared for English as against Oriental education. Thus a great decision was taken, a decision which has momentous and far-reaching consequences and which has vitally affected the whole course of India's national life. Attempts were made to reverse the decision, but to no purpose. In 1839 Lord Auckland published a minute which finally closed the controversy in favour of English. Thus since that date higher education in India has been linked with English and has proceeded upon the recognition of the value of English instruction and of the duty of the State to spread Western knowledge among Indians.

#### SIR CHARLES WOOD'S DESPATCH ON EDUCATION, 1854

**FUNDAMENTAL PRINCIPLES** In 1854 the education of the whole people of India was definitely accepted as a State duty and the Court of Directors in their Despatch (Sir Charles Wood's Despatch) laid down the principles which were to guide the Indian Government in the programme of the great task of extension and systematic promotion of general education in India, both English and vernacular. This Despatch forms the Charter of education in India. The measures prescribed in the Despatch for carrying out this policy were: the constitution of a separate Department of Public Instruction in every Province, the foundation of Universities at the Presidency towns, the establishment of training schools for teachers, the maintenance

of the existing Government Colleges and schools, and the increase of their number where necessary, the establishment of new middle schools, increased attention to all forms of vernacular schools for elementary education, and finally the introduction of a system of grants-in-aid which should foster a spirit of reliance upon local exertions. The English language was to be the medium of instruction in the higher branches and the vernaculars in the lower. The system of grants-in-aid was to be based on strict religious neutrality. A comprehensive system of scholarships both for high schools and colleges was instituted. Female education was to receive the frank and cordial support of the Government. The attention of the Government was specially directed to placing the means of acquiring useful or practical knowledge within the reach of the great mass of the people.

When the Government of India was transferred from the East India Company to the Crown, the Despatch of 1859 reaffirmed the principles laid down in the Despatch of 1854. The Despatch of 1859 reviewed the progress since 1854 and expressed satisfaction at the progress of English education and noted the failure of the people to co-operate with the Government in promoting vernacular education. It suggested that vernacular instruction should be provided on the direct responsibility of the officers of the Government. Thus the Despatches of 1854 and 1859 constitute the fundamental codes which guide the efforts of the Government for the education of the people.

#### EXPANSION—PROGRESS—1854 TO 1913

A Department of Public Instruction was established in each Province soon after 1854. The Universities of

Calcutta, Madras and Bombay were incorporated in 1857 and those of the Punjab and Allahabad in 1882 and 1887 respectively. The rapid increase of schools and colleges and the rapidly increasing number of students receiving English education attracted the attention of Government, which appointed a Commission under Sir William Hunter in 1882 to review progress. In its valuable report the Commission made various suggestions, especially for placing more reliance on private efforts for secondary education. The Commission was excluded from considering University problems. Since 1883 the progress of education has been reviewed periodically. Between 1882 and 1898, the Indian Universities turned out hundreds of graduates and thousands of matriculates who, failing to find the expected employment, became disgruntled and politically vociferous. Dissatisfaction grew apace. The quality of education had also suffered. The Review of 1898 was followed by a searching inquiry and rigorous measures of reform. It was believed that there was something wrong with the system of English education in India. In 1901 Lord Curzon, with a view to coping with the problem, convened a conference of Indian educationists and administrators to discuss the problem of higher education. In 1902 the Government of India appointed a Commission to report on the constitution and working of the Universities and to recommend measures for raising the standard of university teaching and promoting the advancement of learning.

#### THE INDIAN UNIVERSITIES ACT OF 1904

The Indian Universities Act of 1904 gave effect to the recommendations of the Commission. The Act

defined the functions of the Universities in wide and general terms. Indian Universities, which were modelled on the University of London, were, till 1904, merely examining bodies. The Act of 1904 specifically recognised their wider functions by empowering them to provide for the instruction of students, with power to appoint University professors and lecturers, to hold and manage educational endowments, to erect, equip and maintain University laboratories and museums, to make regulations relating to the residence and conduct of the students and to do other work necessary to achieve these objects. The principle of affiliating distant colleges to a Central Examining University was left untouched, but the connection between the colleges and the University was made closer and more effective. The territorial limits of each University were prescribed. Conditions of receiving and retaining affiliation were described in detail, and a regular and systematic inspection of colleges by University Inspectors was established. The Act required the appointment of new Senates, Syndicates and Faculties for all the Universities. The office of Senator was made tenable for five years only instead of for life. It limited the members of Senates and Syndicates while increasing the proportion of elected Fellows and securing the presence of a strong professional element. It required the Senates to prepare and submit to the Government a new body of regulations. All Universities got the new regulations sanctioned by the Government by the end of 1905. Immediately after the passing of the Act, Government made a recurring grant, to last for five years, of £33,300 per annum for the equipment of University and College education. The Act of 1904 aimed not

at any fundamental reconstruction of the Indian University system but a rehabilitation and strengthening of the existing system. The Commission of 1901 was excluded from directly considering school problems, with the result that it was unable to deal with the problem of education as a whole. Critics of the Indian Universities Act of 1904 pointed out that the Act had strengthened official control over higher education to such an extent that for all practical purposes the Indian Universities had become departments of Government. Again, in the words of Sir John Anderson: "Some benefits undoubtedly accrued from the legislation of 1904, but it is at least open to question whether the 'bureaucratising' of Universities did not in practice overtax with additional burdens their already overlaid machinery."

The progress of higher education from 1905 to 1913 was steady. The five universities were of the affiliating type. They consisted of groups of colleges located at a distance and bound together only by a central examining organisation. The growing demand for University education from 1887 to 1916 was met, not by the creation of new Universities, but by enlarging the size of the constituent colleges and increasing their number. By 1913 the Universities had ceased to be living organisms. They were in many cases little more than an agglomeration of units bound to the central institution only by their need for some external examination for their students which should command public confidence. The Government of India in their Resolution of 1913 recognised these defects and emphasised the need for unitary teaching Universities. Meanwhile the strength of communal feeling and the growth of provincial patriotism led

to the establishment of new Universities. The Benares Hindu University was founded in 1915. The Aligarh Muslim University was constituted in 1920, and the Patna University was incorporated in 1917. Thus there commenced a disintegration of the old Universities. This wider problem and the problem of University education especially in Bengal presented great difficulties to the Government.

To solve these problems the Government of India appointed the Calcutta University Commission under the chairmanship of Sir Michael Sadler (known as the Sadler Commission), in 1917. The Commission presented its report in 1919. Its monumental report is a veritable mine of valuable and useful information regarding higher education in India and in Bengal in particular. Its recommendations though primarily meant for Bengal were equally applicable to other Universities in India. It recommended a complete reorganisation of the system of higher education in Bengal. The measures prescribed for carrying out this policy were: (1) the immediate establishment of a unitary teaching University at Dacca and the gradual development of other centres of collegiate education with a view to the establishment of similar Universities, (2) a synthesis of the work of the various colleges situated at Calcutta, (3) the co-ordination of the work of the outside colleges by means of a mofussil board, (4) a complete revision of the constitution of the Calcutta University with the special purpose of differentiating between the academic and the purely administrative side of its work, (5) the delegation of all work up to the Intermediate standard, hitherto conducted by the University, to institutions of a new

THE CALCUTTA  
UNIVERSITY  
COMMISSION  
1917-19

type called the Intermediate Colleges, which should provide both general and special education under the supervision of a board of secondary and intermediate education. This board is to consist of the representatives of Government, the University, the Intermediate Colleges and High Schools, and (6) the transfer of the administration and control of Secondary Education from the University and Government to this Board.

The Government of India drafted a bill to give effect to these recommendations but could do nothing owing to financial difficulties. After the constitutional changes effected by the Reforms of 1919 an Act was passed in 1921 substituting the Governor of Bengal for the Governor-General as the Chancellor of the Calcutta University. Except for this change and for the excision of the Dacca University area from the control of the Calcutta University, no other changes were effected.

The recommendations of the Sadler Commission were commended generally to Provincial Governments by the Government of India in 1920. These recommendations influenced the Government in their action after 1919. The Dacca University and the Lucknow University, which were founded in 1920, are unitary teaching Universities. The Allahabad University was reconstituted in 1921. The Delhi University was established in 1922. The Bombay University also reformed its constitution on the recommendations of the Setalvad Committee in 1928. The Lucknow, the Dacca and the Allahabad Universities have separated the Intermediate classes from the sphere of University work and have transferred the control over them to the Boards of Secondary and Inter-

mediate Education. In other Universities the question as to whether the Intermediate course should or should not form part of the University system is not yet decided. In respect of the reinforcement, if not replacement, of the old type of University, with its large number of affiliated but scattered colleges, by unitary teaching Universities properly equipped for advanced study and research, some progress has been made. But the Hartog Committee (1930) opined that "the requirements of India cannot be met solely by unitary Universities and that the affiliating University is likely to remain for many years to come."

In 1921, the responsibility for education in the Governors' Provinces was transferred to Ministers. The Central Government guided and controlled the general policy of higher education. Under the Government of India Act of 1935, University education is now entirely within the provincial sphere except in a case where a University functions in two Provinces, in which case it is within the sphere of the Federation.

**CLASSIFICATION  
OF EDUCATIONAL  
INSTITUTIONS**

Educational institutions in India are of two classes: (1) Public, and (2) Private.

(1) Public institutions adopt the course of study prescribed by the Government or the University, undergo inspection either by the Department or the University, and present pupils at the examination held by the Department or the University. They may be under either public or private management; the latter are either aided schools or colleges.

(2) Private institutions do not fulfil the above conditions.

As regards public institutions, the system of education functions through three grades of institutions: (a) Universities and Colleges, (b) Secondary Schools or High Schools, (c) Primary Schools. These are all recognised institutions. In addition to this there are various institutions of a special character, such as technical schools and colleges, engineering and technological schools and colleges, law colleges, medical schools and colleges, training colleges and military schools.

#### PRESENT POSITION OF EDUCATION IN INDIA

##### UNIVERSITIES AND COLLEGES

There are now in India eight Universities: Calcutta, Madras, Bombay, the Punjab, Patna, Nagpur, Andhra, and Agra, which are of the affiliating type, and there are nine—Benares, Aligarh, Deccan, Allahabad, Lucknow, Delhi, Hyderabad, Mysore, and Annamalai—which are to a greater or lesser extent of the unitary teaching type. In 1932-33 there were in India 324 colleges, of which 292 were for males and thirty-two for females. The total number of scholars in these colleges was 103,761, of whom 101,814 were males and 1,947 females. The Government spent Rs. 2,43,92,877 on University education.

It is stated that the University system is overburdened by the excessive number of students often with inadequate qualifications. It is contended that higher education is top-heavy and that the system is not adjusted to the social and economic structure of Indian society. It is further pointed out that the educated and partly-educated output of the Universities is greatly in excess of the country's capacity to absorb it, whether in public employment or the professions, or in commerce or industry, and consequently it

leads to great disappointment and discontent among the educated unemployed. It is also stated that the mass production of the Universities provides little scope for originality and creativeness. Nobody can deny the substance of this criticism. It is true that the number of students has greatly increased and is still increasing from year to year, but having regard to the population of India there is no legitimate ground for any alarm. The quality of education is undoubtedly not very satisfactory, but having regard to the nature of the teaching staff and the courses of study, which are inevitably taught partly in vernaculars and mostly in English, it cannot be otherwise. The University authorities, the Provincial Governments and the Governor-General are alive to the acuteness of the problem of unemployment amongst the educated, and they are applying their anxious attention to evolving a scheme for relieving the unemployment among the educated classes. The Report of the Sapru Committee on unemployment among the educated is an instance in point. With the adoption of the vernacular as the medium of instruction in higher education, the strain imposed on the students by expressing their thoughts in English will be removed and their energy may crystallise into creativeness and originality. The Government of India has recently revived the Central Advisory Board with the object of solving the problem of higher education, the most acute of all problems in India. The Indian Universities Conference held in 1924 suggested the creation of a central agency for inter-University problems. In accordance with these suggestions the Inter-University Board was established in 1925. All Universities have joined the Board.

Its functions are to act as an inter-University organisation and a bureau of information, to facilitate the exchange of professors, to co-ordinate their work and to assist Indian Universities to get recognition abroad. Each member University contributes a fixed sum towards its expenditure. The Board consists of one member of each University and one representative of the Government of India who has no voting power. It has not as yet much influence on University policy, but it is doing useful work in collecting information and in stimulating thought on problems of higher education. It meets once a year.

#### THE UNIVERSITY OF BOMBAY

Influenced by the recommendations of the Sadler Commission and confronted with the pressing problems of higher education, the Government of Bombay appointed in 1927 a committee of which Sir Chimanlal Setalvad was the chairman. The Committee in its report made comprehensive recommendations for reforming and democratising the constitution of the University, for separating administrative from academic work, and for the establishment of a separate University for Poona in the first instance and for Gujerat, Karnatak and Sind in course of time. Most of these recommendations were carried out by the Bombay University Act of 1928, whose object was "to reconstitute the University so as to enable it to provide greater facilities for higher education and research, while continuing to exercise due control over the teaching given by the affiliated colleges."

Under the reformed constitution the University functions through four bodies: (1) the Senate, (2)

the Syndicate, (3) the Academic Council, and (4) the Faculties and Boards of Studies.

The Senate is the supreme governing body of the University. Its size has been increased from 100 to 150 members, only forty of whom (as against eighty out of 100 in the past) are nominated by the Chancellor, the Governor of Bombay. The remaining members are elected by a number of constituencies: the principals of colleges and University Teachers elect thirteen, the headmasters of schools elect five, Public Associations such as Municipalities, District Local Boards, the Indian Merchants' Chamber, and the Mill-Owners' Association send fifteen, the Registered Graduates elect twenty-five, the Faculties ten and the Bombay Legislative Council five, one of whom is a member for the University. In addition to the Chancellor, the Vice-Chancellor, the Registrar and some officials are also ex-officio members of the Senate, and they are all included in the list of the nominated members. The duration of the Senate is five years.

The executive government of the University is vested in the Syndicate. It consists of the Vice-Chancellor, the Rector, if any, the Director of Public Instruction, seven persons elected by the Academic Council from its members, and nine members elected by the Senate from its members who are not professors or principals or headmasters. The term of the Syndicate is three years.

The Academic Council, which is a new body, is the chief authority in all academic matters such as teaching, courses of study, selection of text-books, award of scholarships and prizes. It consists of the Vice-Chancellor, Deans of Faculties, representatives of the University professors and whole-time University

teachers, representatives of Boards of Studies and five persons elected by the Senate from among the Fellows. All elections are made according to a system of proportional representation by means of a single transferable vote.

There are Faculties for different branches of learning such as arts, law, medicine, science, etc. They are formed by assigning Fellows who have special qualifications to particular branches of learning. The Boards of Studies consist of persons who have special qualifications selected from the members of the Senate and some expert outsiders. They decide the courses of studies, the syllabuses, the text-books, and recommend panels of examiners, award of scholarships and research grants.

The original intention of the Bombay University Act of 1928 was that the University should conduct post-graduate teaching in all branches of learning including technology, but the financial position has prevented its execution. The University runs a School of Economics and Sociology and a Department of Chemical Technology. At present post-graduate teaching and research is conducted partly by the University directly in the School of Economics and Sociology and in the Department of Chemical Technology, and partly in affiliated colleges whose work is conducted and co-ordinated under the supervision of the University. Since June, 1936, the University has maintained a hostel for post-graduate students. During recent years the University has attempted to exercise a greater measure of control over the teaching in colleges than before. Some of the colleges are still overcrowded and understaffed.

DIRECTOR  
OF PUBLIC  
INSTRUCTION

In each Province the Director of Public Instruction, who is a member of the Indian Educational Service, is the administrative head of the Department of Education. He acts as an adviser to the Education Minister. He controls the inspection and the teaching staff of the Government institutions and is responsible to the Provincial Government for the administration of education. The authority of the Government in controlling the system of public instruction is in part shared with and in part delegated to the University as regards higher education and to local bodies as regards elementary and vernacular education. Institutions under private management are controlled by Government or by local bodies by "recognition" and by the payment of grants-in-aid with the assistance of the inspecting staff.

#### SECONDARY EDUCATION: HIGH SCHOOLS

Secondary education has since 1884 been left very largely to private agencies. The Government generally maintains one school in every district as a model for the guidance of other schools under private management. In 1932-33 there were 13,741 secondary high or middle schools in British India with 22,297,529 scholars. The total Government expenditure on secondary education was over eight crores of rupees. The quality of secondary education is not satisfactory. The main defects of secondary education are the dead uniformity of the school curriculum, lack of professional training in teachers, and the inadequacy of their salaries. The first need of secondary education is the improvement of teaching. With the introduction of vernaculars as media of instruction in high schools the

quality of education may be expected to improve. Some of the private institutions are overcrowded and understaffed. Supervision by the University is nominal and irregular.

#### PRIMARY EDUCATION

The administration of primary education rests with local boards and municipalities, but the real control rests with Government. In recent years nine provincial legislatures have passed Primary Education Acts authorising the introduction of compulsory primary education by local bodies. Bombay led the way in 1918. In Bihar and Orissa, Bengal and the United Provinces, Acts for making primary education compulsory were passed at the instance of the members of the legislatures, whilst in the Punjab, the Central Provinces and Madras they were passed on the initiative of the Government. The Bombay Primary Education Act of 1923 provides for compulsory elementary education and for better management and control of primary education. It allows the district boards to introduce compulsion within particular areas if certain conditions are fulfilled. It is a permissive measure. In Bombay Presidency, primary education has been transferred to the district boards, but the results are far from satisfactory. The legislation on the subject being permissive, the progress is very slow. It is believed that unless mandatory legislation is passed it will be very difficult to make India literate even within a reasonable time.

On March 31, 1932, compulsory primary education was introduced in 153 urban and 3,392 rural areas in the whole of British India. On the same date there were 201,399 recognised primary schools in British

India with 10,228,788 scholars. The total expenditure was a little over eight crores of rupees. There are 200,000 primary schools. If we remember that there are 500,000 villages in British India, that there are only 200,000 primary schools, and that the towns have more than four to five of these schools, it is obvious that more than 300,000 villages are without primary schools. Only eight per cent of the total population of British India is literate. India has a long way to cover even in primary education. The necessity of introducing compulsory and free primary education throughout the country can hardly be exaggerated. To appreciate this we have only to remember that, according to the census of 1931, out of the total population of 350,000,000 only 21,800,000 were literate. The knowledge of English is confined to 3,650,000 people, a little over one per cent of the population.

## CHAPTER XX

### MEDICAL RELIEF AND SANITATION

"India's house, from the public health point of view, is sadly out of order. This disorder requires to be attended to."

PUBLIC HEALTH COMMISSIONER'S REPORT, 1925.

"In the land of the ox-cart, one must not expect the pace of a motor-car."

RESOLUTION OF THE GOVERNMENT OF  
INDIA ON SANITATION, MAY 23, 1914.

The question of medical relief and sanitation has engaged the attention of the Government for the last sixty-five years. Great improvements have been achieved in the sanitary conditions of the cities, but in the rural areas sanitary arrangements are almost non-existent. "The reason is the apathy of the people and the tenacity with which they cling to domestic customs injurious to health. While the inhabitants of the plains of India are on the whole distinguished for personal cleanliness, the sense of public cleanliness has ever been wanting. Great improvements have been effected in many places, but the village house is still often ill-ventilated and over-populated, the village site dirty, crowded with cattle, choked with rank vegetation and poisoned by stagnant pools, and the village tanks polluted and used indiscriminately for bathing, cooking and drinking."

The problem of public health in India is very serious. The birth-rate, the death-rate and the rate of infant mortality are alarmingly high. This is largely due to the poverty of the people, the custom of early marriage,

illiteracy of mothers, want of medical aid at the time of child-birth, insufficient food, and the fact that in many cases mothers are engaged in physical work up to the last moment of child-birth. The whole problem bristles with difficulties, as it is inextricably interwoven with social habits and beliefs. The way to improve the whole situation lies through the education of the people.

**MEDICAL ORGANISATION** The Director-General of the Indian Medical Service, who supervises the medical work throughout India, is responsible to the Government of India. There is also a Sanitary Commissioner for the whole of India who advises the Government of India in matters concerning the development of preventive medicine.

Every Province has its own medical organisation. The chief medical officer in a Province is called the Surgeon-General in Bombay, Bengal and Madras, and the Inspector-General of Civil Hospitals in other Provinces. In most Provinces, there is also a Sanitary Commissioner or a Director of Public Health. He is responsible for the supervision of preventive medicine throughout the Province. Each district is in charge of a civil surgeon. In many districts there are also Deputy Sanitary Commissioners or District Health Officers. The Taluka dispensaries are in charge of assistant surgeons or hospital assistants.

**HOSPITALS** The provision of hospitals and dispensaries in the cities is fairly adequate, but in rural areas it is shockingly inadequate. Generally in a group of thirty to forty villages we find only one dispensary. Most of the hospitals are directly or indirectly under Govern-

ment control. They are either maintained or aided by provincial, district, municipal, or private funds. In the cities they are mostly maintained by the municipalities and in rural areas by the local boards. In Presidency towns there are several hospitals maintained by the municipalities or by private charities. They are equipped with highly efficient and trained staffs. In every Province there are medical colleges affiliated to the Universities. The professors of these colleges are practising physicians or surgeons. Hospitals are attached to these colleges to provide practical training for the medical students.

#### HOSPITALS FOR WOMEN

The problem of providing medical aid to women is very difficult in India owing to the social customs. But during recent years some progress has been made. In large cities hospitals for women are provided. In 1885, the National Association for Supplying Medical aid to the Women of India was started by the Countess of Dufferin, and the work of the Association still continues. The Association is maintained by private subscriptions and occasional Government grants. A Medical College for Women from all parts of India was established at Delhi in memory of Lady Hardinge. It is doing useful work.

India suffers from three main classes of fatal diseases: specific fevers, diseases affecting the abdominal organs, and lung diseases. The most important are cholera, small-pox, plague and various kinds of fevers.

Cholera is very common in India. It claims a large number as its victims every year. The germ of the disease gets into the body through drinking water.

Small-pox is very prevalent in India. It is a terrible disease, as it is most infectious. Its ravages are

arrested by the universal and compulsory provisions for vaccination. The Government, the municipalities and the District Boards maintain a large staff of vaccinators. Adequate facilities for vaccination are provided in the villages.

Plague has been a scourge in India. It visited India for the first time in 1896 and subsequently spread throughout India. Its toll is terrible. Mice usually carry the germ. The provision for inoculation in all areas has arrested its ravages.

Fever is India's greatest enemy. Nearly five million people die every year from different kinds of fever, and millions are undermined or injured. Government has endeavoured to cope with the problem by making provision for the sale of quinine in small packets at cheap rates through the post offices. The Government maintains chincona plantations for the manufacture of quinine.

The total wastage of human life from preventible diseases in India is appalling. But the whole problem is mixed up with the poverty and illiteracy of the people and it cannot be effectively solved till all these problems are also solved.

**MEDICAL SERVICES**      The important medical posts are filled by the members of the Indian Medical Service who are recruited by the Secretary of State. These officers hold commissions in the Army and are often engaged in the performance of civil duties. Their military duties are confined entirely to the Indian Army. There are also civil and military subordinate services, whose members are recruited from graduates of the Indian Universities. The senior members of the subordinate services are either in

charge of small hospitals or are assistant surgeons in the larger hospitals. In some cases they may be appointed to posts usually held by the members of the Indian Medical Service.

**SANITATION** In every Province there is a Sanitary Commissioner or a Director of Public Health. There are also other officers in the district working under him. There is also a Sanitary Board which controls and supervises the work of the District Boards and the municipalities in connection with water-supply and drainage schemes. In Bombay Presidency there are local Sanitary Committees which supervise the sanitary arrangements in the areas under their charge. The local authorities are empowered to borrow money from the Government for sanitary works.

Provision is made by the Government for medical research. A research institution is maintained at Kasauli for this purpose. Various Provincial Governments are maintaining laboratories for medical research. There are at Kasauli, Coonoor, Shillong, and some other places Indian Pasteur Institutions for the treatment of cases of hydrophobia.

## CHAPTER XXI

### THE POLICE AND JAILS

#### I. Police

##### HISTORICAL

The indigenous system of police in India was organised on the basis of land tenure. The Zamindar was bound to apprehend all disturbers of the peace and to restore the stolen property or make good its value. Under the Zamindars were a number of subordinate tenure-holders who were responsible for the maintenance of the peace in their areas. There was also as a rule the joint responsibility of the villagers. The village responsibility was enforced through the headman, who was always assisted by one or more village watchmen. The watchman was the real executive police of the country. He was helped by the male members of his family and at times by the whole village community. His duties were to keep watch at night, find out all arrivals and departures, observe all strangers and report all suspicious persons to the headman. He was required to note the character of each man in the village. If a theft was committed within the village boundary, it was his business to detect the thieves. In towns the administration of the police was entrusted to an officer called the Kotwal, who was usually paid a large salary from which he was required to defray the expenses of a large police establishment. This system was well suited to the needs of a simple homogeneous agricultural community,

but it could not stand the strain of political disorder and the relaxation of central control during the dissolution of the Mogul Empire.

When the British acquired power they retained the village system and tried to improve the machinery of supervision. Lord Cornwallis relieved the Zamindars of the liability for police service, which was commuted for a payment or enhanced revenue. The place of the Zamindars was taken by the Magistrates of Districts, who had under them for police purposes a staff of darogas with subordinate officers and a body of peons. In cities the office of Kotwal was continued and a daroga was appointed for each ward of the city. The results of the changes were not very satisfactory. Each Province attempted to reorganise its police organisation between 1801 and 1860. On the annexation of the Punjab the question of reform in police organisation was taken up. The necessity for reform, however, was not confined to the Punjab, and in August, 1860, the Government of India appointed a commission to inquire into the whole question of police administration in British India.

THE POLICE  
COMMISSION  
OF 1860

This Commission recommended the abolition of the military police as a separate organisation and the constitution of a single homogeneous force of civil constabulary for the performance of all police duties. To secure unity of action and identity of system the general management of the force in each Province was entrusted to an Inspector-General. The police in each district were to be under a District Superintendent and helped by an Assistant District Superintendent in large districts, both the officers being

usually Europeans. The subordinate force recommended consisted of inspectors, head constables, sergeants and constables; the head constable being in charge of a police station, and the inspector of a group of stations. The police forces of the various Provinces are still organised on the general basis laid down by the Police Commission of 1860, though there has been some divergence therefrom in matters of greater or less importance. The system introduced in 1861 was on the whole efficient, but in actual working it revealed some defects. A Police Commission was appointed in 1902 to improve the organisation. In its report, submitted in 1903, it made many comprehensive recommendations regarding all aspects of police organisation. Its main recommendations were accepted by Government with some modifications in matters of detail. They have been carried out to a very large extent in all Provinces.

THE POLICE  
COMMISSION  
OF 1902

#### POLICE ORGANISATION IN BRITISH INDIA

Strictly speaking there is no Indian or All-India police organisation. The existing police organisation, which is under the Police Act of 1861, is essentially provincial, administered by the Provincial Governments, subject only to the general control of the Government of India. The police establishment forms in most Provinces a single force under the Provincial Government and is formally enrolled. In Bombay there is a separate force for each district. At the head of the police organisation in each Province is the Inspector-General who has the general control of the police. Deputy-Inspector-Generals hold subordinate charge of portions of the Province known as "ranges".

POLICE  
ORGANISATION  
IN A DISTRICT

The district is the chief unit for police as for general administration. At the head of each district is a District Superintendent of Police (D.S.P.) with powers of enlistment and dismissal of constabulary. He is responsible for the discipline and internal management of the force to his departmental heads: Deputy Inspector-General of Police, Inspector-General of Police, and Minister, and is subordinate to the District Magistrate in all matters connected with the preservation of peace, maintenance of order and the detection and suppression of crime in the district. He is assisted by one or more Assistant or Deputy Superintendents of Police. The Deputy-Superintendent of Police and the Assistant Superintendent of Police belong to the All-India Service and are recruited by the Secretary of State, and their rights and privileges are, as already stated in the chapter on Services, safeguarded in the Act. Deputy-Superintendents of Police are mostly Indians, and are recruited in India and belong to the Provincial Service.

The district is sub-divided for police purposes into sections or "Circles" under Inspectors, and the Circle is again split up into areas in each of which is a police station in charge of a sub-inspector. The area controlled by a police station averages 100 square miles and may be much larger. There are also subsidiary police stations known as outposts, which are most numerous in Bombay.

At the headquarters of each district a reserve is maintained which supplies men for escort and other duties and serves to strengthen the police in any part of the district where occasion may arise. The reserve force is kept in readiness for dealing with

local disturbances. Some of the general-duty police are armed with lathis, swords, smooth-bores, or in some cases with rifles. The truncheon is the general arm of the constable. A small proportion of police are mounted. A force of military police is still maintained in the North-West Frontier Province.

#### STRENGTH OF POLICE ORGANISATION

In 1932 in the whole of British India there were sixty-three Inspectors-General and Deputy-Inspectors-General of Police, 964 Superintendents and Assistant Superintendents or Deputy Superintendents of Police, thus there were 1,027 officers belonging to the Indian Police Service and the higher grades of the Provincial Police Service. The total police force for the whole of British India was 226,512 including military and mounted police. The total cost on police was approximately thirteen crores of rupees. Bengal showed the highest expenditure, which was two crores in that year.

#### VILLAGE POLICE

The regular police are largely dependent for information and assistance on the village officers. Each police station has within its jurisdiction a number of villages. In each village there is a Chowkidar or village watchman. The village watchmen are not stipendiary, but receive perquisites from the inhabitants of the village or rent-free lands or small sums of money from Government. Hereditary claims to the office are, wherever possible, recognised. It is their special duty to prevent crime and public nuisances and detect and arrest offenders within the village limits. In each village the village police are

under the charge of the Police Patel, who is also, in small villages, a revenue Patel. His duties as Police Patel are to furnish the magistrate of the district any returns or information called for and to keep him constantly informed as to the state of crime and all matters connected with the village police and the health and general conditions of the community in his village. The supervision and control of the village officers are entrusted to the Collector or Deputy-Commissioner and his subordinates, and not to the regular police.

**TOWN  
POLICE** In towns the police organisation is on much the same basis as in rural areas. In the three Presidency towns, Calcutta, Bombay and Madras, the police are organised as a separate force under a Commissioner who is responsible both for law and order and for departmental training and efficiency. He is not the subordinate of the provincial Inspector-General and he deals direct with Government.

**RAILWAY  
POLICE** A special police organisation exists in connection with the railways. The railway police are organised separately from the district police but act in co-operation with them. The police employed along the railway lines are under the supervision of Superintendents. Their pay and prospects are identical with those of the district police. The cost of dealing with crime and preserving order is wholly debited to the provincial revenues, and that of the "Watch and Ward Staff" is borne by the railway administrations.

THE CRIMINAL  
INVESTIGATION  
DEPARTMENT  
OR C.I.D.

In addition to the police attached to individual districts there exists a special organisation both in the mofussil and cities, for the detection and investigation of specialist and professional crimes, called the Criminal Investigation Department, which includes the Finger-Print Bureau and is under the immediate control of a Deputy-Inspector-General of Police. The Criminal Investigation Department in co-operation with the police of other Provinces is employed in the prevention of the spread of serious crime, in the investigation into crime having ramifications in several jurisdictions, and in the pursuit of criminals. The Finger-Print Bureau has been working satisfactorily since 1901.

## II. Jails

### HISTORICAL

The history of the prison reforms in India dates from the appointment in 1836 of the Committee of which Macaulay was a member. It reported that in the great essentials of cleanliness, provision of food and clothing and attention to the sick, the state of Indian prisons compared favourably with those of Europe. It criticised severely the corruption of the subordinate establishment and insisted on rigorous measures. Two more Committees were appointed in 1864 and 1877. In 1888-89 the Government of India appointed another Committee whose object was to examine the actual carrying out of the principles laid down by earlier committees and to endeavour to produce greater uniformity in practice throughout India. This task was entrusted to two experienced jail officers, Drs. Walker and Lethbridge, who pro-

duced an admirably clear and businesslike report which covered nearly the whole field of internal administration of the Jail Department. This report was supplemented by the report of a Committee in 1892. Its proposals were embodied in the Indian Prisons Act of 1894.

JAIL  
COMMITTEE  
OF 1919

Under the Government of India Act, 1919, the maintenance of prisons was within the sphere of Provincial Governments but subject to All-India legislation. With the object of laying down general principles of universal application to all Provinces, the Government of India appointed a Jail Committee in 1919. The report of this Committee, which contained the first comprehensive survey of Indian prison administration, laid stress on the necessity of improving and increasing existing jail accommodation, of recruiting a better class of warders, of providing education for prisoners and of developing prison industry to meet the needs of the consuming departments of Government. It recommended the separation of civil from criminal offenders and the creation of Childrens' Courts. Pointed attention was drawn to the needs of improving the reformatory side of the Indian system. It also recommended the segregation of habitual criminals, provision of separate accommodation for prisoners on or awaiting trial, and the abolition of certain disciplinary practices which are liable to harden or degrade the prison population.

All Provinces have more or less carried out these recommendations. Overcrowding has been remedied. The infliction of whipping is carefully regulated. Solitary confinement as a prison punishment has

been abolished. The remission system has been improved. Convicts are trained to useful trade, and juvenile courts have been established. A general improvement has been made in the food and clothing of prisoners. Concessions are made with regard to interviews and letters of prisoners. In several Provinces advisory boards have been constituted to review periodically the sentences of long term prisoners. The ameliorating treatment of the prisoners has not escaped notice. The Borstal System for selected juveniles and young adults is flourishing in several Provinces. In Bombay there has been a Borstal School at Dharwar since 1905. Reformatory and Industrial Schools are provided in many large cities. Voluntary organisations, such as Released Prisoners' Aid Societies, are established in Bombay and Calcutta. In many places honorary visitors are appointed. In short, many reforms have been introduced to humanise jail administration.

#### JAIL ADMINISTRATION

Jail Administration in India is regulated by the Prisons Act of 1894 and the rules issued under it. There are three classes of jails: in the first place, large central jails for convicts sentenced to more than one year's imprisonment. Secondly, district jails at the headquarters of districts, and thirdly, subsidiary jails and "Lock-ups" for prisoners on trial and convicts sentenced to short terms of imprisonment. In each Province the Jail Department is under the control of an Inspector-General of Prisons. He is generally an officer of the Indian Medical Service with jail experience. The Superintendents who are in

CLASSIFICATION  
OF JAILS

charge of central jails are usually recruited from the same service. The district jail is under the charge of a Civil Surgeon and is frequently inspected by the District Magistrate. The staff under the Superintendents includes, in large central jails, a Deputy Superintendent to supervise the jail manufactures, and in all central and district jails one or more subordinate medical officers. The executive staff consists of jailers and warders. Convict petty officers are also employed in all central and district jails, the prospect of promotion to one of these posts being a strong inducement to good behaviour.

The general characteristic of the Indian Prison System is the confinement in association by day and night. The desirability of separate confinement by night and cellular confinement during the first part of long and the whole of short sentences is recognised. Some steps have been taken in this direction during recent years, and many sleeping wards have been fitted with cubicles.

#### CLASSIFICATION OF PRISONERS

Prisoners are divided into the following classes which are kept separate from one another: persons under trial, civil prisoners, females, boys, youths and adult male convicts. There are also political prisoners convicted of political offences. Habitual offenders are kept separate as far as possible. The system of fettering prisoners generally has long been abandoned and fetters are now only used as punishment or to restrain violence. The hours of work in jails amount to about nine a day. The dietary varies in different parts of the country with the staple food of the people.

Those who are sentenced to transportation for life

are sent to the penal settlement of Port Blair in the Andaman Islands.

In the whole of British India there are fifty-one central jails, 182 district jails and 970 subsidiary jails. In 1932 there were in British India, 1,051,747 prisoners of whom 1,023,313 were males and 28,434 females. The total expenditure on all prisons (excluding the cost of buildings and repairs) in the same year was  $17\frac{3}{4}$  crores of rupees. The average annual cost per prisoner in the large Provinces of British India in 1934 was about Rs. 106.8.

## CHAPTER XXII

# IRRIGATION AND RAILWAYS

### I. Irrigation

#### IMPORTANCE OF IRRIGATION

“Besides increasing the yield of the crops and making agriculture possible in tracts where, without an assured supply of water, nothing would grow, and protecting large areas from famine and scarcity, the irrigation works of India form also a remunerative investment for the funds sunk in them.”

#### TRIENNIAL REVIEW OF IRRIGATION 1918-21.

The prosperity of agriculture, the dominant industry of India, is mainly dependent upon rainfall. The general characteristics of Indian rainfall are its unequal distribution over the country, its irregular distribution throughout the season and its liability to failure or serious deficiency. The normal annual rainfall in the country varies from 410 inches at Cherapunji in Assam to less than three inches in Upper Sind. The annual average rainfall over the whole country is about forty-five inches and there is very little variation from this average, but in separate tracts extraordinary variations are found. In general it has been found that the lower the rainfall in a tract, the greater is its liability to serious deficiency from the average, and the most precarious area is that in which the normal rainfall is less than fifty inches. This area includes practically the whole of the Punjab and the North-West Frontier Province, the United Provinces except the submontane districts, Sind, a large portion of Bihar, most of Madras,

most of the Bombay Presidency except a strip along the coast, and portions of the Central Provinces. Thus it is clear that without artificial irrigation these precarious areas would be permanently waste or could be cultivated only in years of exceptionally favourable rainfall. Security of harvest, therefore, may be said to depend to some extent on the existence of some form of irrigation in these precarious areas.

Classing a year in which the deficiency is 25 per cent as a dry year and one in which it is 40 per cent as a year of drought, experience in the past indicates that in the precarious areas one year in every five may be expected to be dry, and one in ten a year of severe drought (famine). It is largely in order to remove the menace of these years that the great irrigation systems of India have been constructed in these areas.

### HISTORICAL

Some irrigation works have been in existence in India since time immemorial. We may mention only the "Grand Anicut" Canal dating from 2 B.C. in Madras and the Jumna and the Ganges Canal constructed during the ancient Hindu period. The Muhammadan rulers also constructed some large works. With the early history of the construction of irrigation works in India during the British period the names of Sir Arthur Cotton and Sir Proby Cautley are associated. Sir Arthur Cotton constructed the "Upper Anicut" across the Coleroon River in Madras. Captain Cautley constructed the great Ganges Canal, a work which in magnitude and boldness of design has not been surpassed by any irrigation work in India. Encouraged by the success of these works two private companies were formed in England to

promote irrigation on a large scale especially in Madras and Bengal, but the ventures soon proved failures. Thenceforth Government undertook the construction of the larger and more important works. During the famines of 1896 and 1901 the value of protective irrigation works was plainly shown. A Commission on irrigation was appointed by Lord Curzon in 1901. It made its report in 1903. Among other things it pointed out the necessity of protective irrigation works in the Deccan Districts of Bombay, Madras, the Central Provinces and Bundelkhand. It also stated that there was no prospect of new irrigation works on any considerable scale proving directly remunerative, but they recommended that work should be undertaken in these tracts with a view to reducing the cost and mitigating the intensity of future famines. The Commission reviewed all irrigation works, suggested new projects and insisted on a thorough investigation of the irrigation capabilities of every part of India. They sketched a rough programme of works for the next twenty years, to add six and a half million acres to the irrigated area at an estimated cost of £30,000,000. These recommendations were accepted by the Government of India and they formed the basis of its irrigation policy.

#### CLASSIFICATION OF IRRIGATION WORKS

Irrigation works may be divided into lift, storage and river works which are represented respectively by wells, tanks, reservoirs and canals. In this chapter we are not concerned with the lift or well irrigation works, which are mostly financed by private enterprise. We are concerned with the administration of public irrigation works.

The Government irrigation works are divided on a two-fold basis: (1) according to the nature of the works, (2) according to the source of funds used for their construction. On the first basis they are classed as storage and non-storage works, i.e., those provided with artificial storage and those dependent throughout the year on the natural supplies of rain from which they have their origin. The expedient of storing water in the monsoon for use during dry weather has been practised in India since time immemorial. Storage works are largely tanks and reservoirs. Non-storage works, which are principally canals, are mostly found in Northern India, upon the Himalayan rivers and in Madras. The great canals constructed and maintained by the Government may be divided into perennial and inundation canals. The bulk of the canals are of the first class, the inundation canals receive waters only during the flood season and are found in Sind and the Punjab on the Indus and Sutlej Rivers.

On the second basis they are divided into (1) "Productive" public works, the capital cost of which is usually provided from borrowed money, (2) "Protective" works, designed as a protection against famines, the capital cost of which is provided either from the current revenues or from an annual grant from the Famine Insurance Fund.

The main test to be satisfied before a work can be classed as productive is that it should within ten years of the completion of construction produce sufficient revenue to cover its working expenses, and the interest charges on its capital cost. Most of the large irrigation systems in India belong to the productive class. Protective works are constructed primarily

to give protection to the "Precarious" tracts, and to guard against the necessity for periodical expenditure on the relief of the population in times of famines. They are not directly remunerative.

#### THE SYSTEM OF MANAGEMENT AND ADMINISTRATION

In most of the Provinces, with the exception of Madras, Sind and parts of Bombay, the distribution of the water and the assessment of the revenue form part of the duties of the engineers of the Public Works Department. The unit of management is the division under the Executive Engineer. This is sub-divided into sub-divisions each under an assistant Executive Engineer for the administration of his sub-division. A number of divisions, usually from three to six, form a circle under the Superintending Engineer, and over all is the Chief Engineer, of whom there may be one or two in each Province according to the nature and extent of irrigation in that Province. The Punjab and the United Provinces and Bombay have two Chief Engineers for irrigation, while the other Provinces have one each.

<b>EXTENT AND COST OF WORKS</b>	<p>In 1932-33 the total area sown in British India was 260,391,159 acres, of which 49,881,881 acres, or 19 per cent, was irrigated by different kinds of irrigation works. Of the irrigated area 58 per cent was irrigated by the Government Irrigation Works. The total capital outlay both on productive and protective works in 1932-33 was Rs. 146 crores and the net return was 5<math>\frac{3}{4}</math> per cent. Taking the productive works alone, the total area irrigated by them was 21,848,478 acres, the capital outlay Rs. 100 crores and the net percentage of profit 7.24.</p>
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placed under the supervision and control of the Government. The railways were to be held by the companies in leases terminating at the end of ninety-nine years, on which termination the fair value of their rolling stock, plant and machinery was to be paid to them. Provision was also made to enable the Government to purchase the lines after twenty-five to fifty years and to enable the companies to surrender their lines to the Government and to receive in return their capital at par.

(2) DIRECT CONSTRUCTION      As the lines were working at a loss, the guaranteed system was found to involve a heavy charge on the revenues of India, and in 1869 it was decided that in future the Government should itself undertake railway construction by both raising and spending capital, thus securing itself the full benefits of cheap credit and of cheaper methods. Accordingly for several years the capital expenditure on railways was mainly incurred directly by the State and no fresh contracts with guaranteed companies were made. By the end of 1879, 6,128 miles of railways had been constructed by companies and 2,175 miles by the Government.

(3) MODIFIED GUAR-      In 1880, the Famine Commission  
ANTEED SYSTEM      urged the necessity for widespread and rapid construction of more railways. They estimated that at least 5,000 miles were still necessary for the protection of the country from famines. As the funds available for construction from the State were not adequate for such progress as was desirable, the Commission recommended private enterprise with the help of Government. Hence, after 1880, companies

were again allowed to enter the field, and construction was carried on partly by the State and partly by the companies. Most of these companies have received financial assistance from Government in some form or other, extending in some cases to a guarantee of interest, and in practically every case they were provided with land free of cost. The Government reserved to itself a considerable measure of control over their management.

Most of these companies were acquired or purchased by the State when their respective periods of contract expired. Thus all the railways became the property of the State. But instead of directly managing them the State entered into fresh contracts with the old companies for their management on certain terms under the general control and supervision of the Government. Thus, though most of the railways were owned by the State, they were managed by companies on behalf of the State which controlled the capital expenditure and the fixing of rates. The contracts for management were made terminable at the option of the Government at specified dates. This arrangement continued till 1920 when there were three types of railways in India: (1) State-owned and State-managed, (2) State-owned and company-managed, (3) company owned and company-managed.

THE ACWORTH  
COMMITTEE,  
1920

During the War the railways had deteriorated and they required rehabilitation. After the introduction of the Reforms of 1919 a committee was appointed, of which Sir William Acworth was the chairman, to examine the working of the railways, and to recommend the most suitable policy for their development. The

Committee recommended an expenditure of 150 crores of rupees in five years on rehabilitating the railways, and the majority report definitely declared in favour of the abolition of the company management of State-owned railways and definitely emphasised that State-owned railways should be managed by the State. The minority report favoured the continuation of

STATE VERSUS COMPANY MAN- AGEMENT	company management on the ground that it was more efficient and eco- nomical than State management. It
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was also claimed that company management secured the working of railways on business principles. The majority report stated that as the property belonged to the State the companies neglected its upkeep, and that the benefits of railway earnings should entirely accrue to Indian revenues, which had made good the deficit of nearly fifty-five crores of rupees on the guaranteed system up to 1900. The Committee also recommended the establishment of a new Department of Communications, reorganisation of railway boards, establishment of a Railway Rates Tribunal, and separation of the railway budget from the general budget. The Government of India did not definitely accept the majority recommendation of terminating company management, but when the contracts for management with the East India Company and the Great Indian Peninsula Company expired in 1925 the Government assumed their direct management. It is expected that when the contracts with the Bombay, Baroda & Central India Railway and the Southern Maratha Railway expire, their management will be assumed by Government. At present all new construction is undertaken directly by the Government. Since 1924, the railway budget is separated from the general

budget, and every year, under a Convention, the railways contribute a certain sum, fixed on a scientific basis, to the general budget.

**PRESENT POSITION  
OF RAILWAYS**

On March 31, 1935, the open mileage of railways in India was 43,019, of which 21,199 were of broad gauge, 17,658 of metre gauge, and 4,162 of narrow gauge. The total capital outlay in the same year was 757 crores of rupees. The gross earnings were ninety crores of rupees. Since 1924, railways have contributed under the Convention thirty crores of rupees to the general revenues, but during recent years they have not been able to make any contribution to the general revenues. The position of railway finance is very unsatisfactory. Economy and retrenchment are indispensable. Trade may improve and receipts may increase, but expenditure requires, in any event, drastic curtailment.

**ORGANISATION OF GOVERNMENT CONTROL**

Control over the operation of guaranteed railway companies was at first secured through the appointment of a consulting engineer. In 1869 a State Railway Directorate was established. After some changes a post of Director-General of Railways was created. It was abolished in 1879 when the post of Secretary to the Government of India in the Public Works Department was created. On the recommendation of Sir Thomas Robertson, who was appointed to make recommendations as regards railway administration, a small board consisting of a chairman and two members was appointed. In 1908 the Railway Department was separated and the chairman became the president of the board. The question of the

organisation of the Railway Board was considered by the Acworth Committee in 1920. It recommended the creation of a new Department of Communications under a member of the Executive Council, and the reorganisation of the Railway Board so as to include one Indian as a member. The Government did not accept the first recommendation but reorganised the Railway Board. The Railway Board as constituted in 1936 consists of the Chief Commissioner as President, the financial commissioner and two members. The Board is under the Executive Member for Commerce and Industry and has the management, supervision and control of railways. Under the New Constitution railways will be managed by the Federal Railway Authority.

## CHAPTER XXIII

### FAMINE RELIEF AND PROTECTION

"It is not in the power of man to prevent drought in India, or, so long as the country is mainly agricultural, to prevent drought from causing famine: all he can do is to restrict and mitigate the resultant suffering. Modern famine policy is thus a struggle against nature. As such it has two objects, the one remedial, the other protective. It seeks to relieve distress when droughts come; and it seeks in many ways to fortify the people against drought."

*Imperial Gazetteer of India*, vol. iii.

#### HISTORICAL

Famines were not unknown to India in ancient times. We have particulars of one or two famines during the Muhammadan period. During the rule of the East India Company, 1765-1858, India suffered in one part or another from twelve famines and four severe scarcities, but no regular attempt was made in those days to grapple with the famine question or to construct any system of famine relief. Between 1858 and 1901 there had been seven famines and one severe scarcity in various provinces of British India. The first of these was in 1861, which led to an inquiry by the Government. Then there was the great Orissa famine in 1868. A Commission which inquired into it laid the foundation of a humane relief policy. There was an intense famine in Rajputana in 1868 and in North Bihar in 1873. In 1876-78 a great famine afflicted Madras, Bombay, and later the North-West Provinces, Oudh and the Punjab. The relief measures were found inadequate. The mortality was extremely

great. This led to the appointment of a Famine Commission under Sir John Strachey in 1880. The Commission in its report on the one hand formulated general principles for the proper treatment of famines and on the other suggested particular measures of a preventive and protective character. In regard to the general principles, the Commission recognised to the full the obligation imposed on the State to offer to the necessitous the means of relief in times of famine. But it laid down as the cardinal principle of their policy that the relief should be so administered as not to check the growth of thrift and self-reliance among the people or to impair the structure of society. With this principle the Provincial Famine Code was framed and the modern policy of famine relief administration was determined. That policy was tested in the famine of 1896-97 and it proved a success. The Famine Commission of 1898, while confirming the original principles, recommended a more liberal wage and freer extension of gratuitous relief. Before this policy was embodied in the Code, the drought of 1899 occurred and the Provincial Governments were compelled to face another great famine. The Famine Commission of 1901 laid down definite principles of famine relief. These are now embodied in the Famine Relief Code, which lays down the various stages and the manner of famine relief administration.

#### ORGANISATION OF FAMINE RELIEF IN INDIA

Modern famine relief is, as already stated, based on an elaborate system that embodies the results of much past experience. Standing preparations are made on a large scale in ordinary times. Programmes of suitable relief works are maintained in each district

and the country is mapped out into relief circles of suitable size. When the rains fail, preliminary inquiries are started and a careful look-out is kept for the recognised danger signals of approaching distress. These danger signals are (1) the contraction of private charity indicated by the wandering of paupers, (2) the contraction of credit, (3) feverish activity in the grain trade, (4) restlessness shown in the increase of crime, (5) unusual movements of flocks and herds in search of pasturage, (6) unusual wandering of people. If these signals are seen, the Government immediately makes the necessary financial arrangements and declares its general policy, and "test" works are started. A test work is a task employing unskilled labour, usually earth work; the conditions are strict but not unduly repellent. When the test works or village inspection disclose clear distress, relief works are opened. The lists of persons entitled to gratuitous relief are revised and the distribution of gratuitous relief begins. Distress usually reaches its climax in May. Policy changes with the advent of the rains. Some relief works are generally closed and there is an extension of local gratuitous relief. Gradually the remaining relief works are closed and gratuitous relief is discontinued, and by the middle of October famine is ordinarily at an end.

The extension of communications and particularly of railways has revolutionised relief and has changed the connotation of the word famine. Famine now, in practice, connotes not the scarcity of grain but that of money. The great horror of famine, an absolute dearth of food, is now unknown. Food grains and fodder are promptly made available in affected areas. As the administration has been freed from the primary

necessity of finding food, the relief system has become increasingly elastic. Relief works are organised with due regard to the feelings of the people. Those who cannot work are relieved as a rule in their villages, and children and weakly persons are specially treated. An elaborate scheme for making relief acceptable to forest and hill tribes has been worked out, and artisans who formerly suffered in ordinary relief works are now as far as possible relieved in their own tribes. The strictness of Government relief, which is inevitably confined to the provision of necessities, is often softened and supplemented by private relief funds, among which the Indian Peoples' Famine Trust, founded in 1900 by a donation of £106,000 from the Maharaja of Jaipur, may be mentioned.

#### FINANCIAL ARRANGEMENT FOR FAMINE INSURANCE

There was no special financial provision made before 1878 to meet the obligation imposed by the periodic recurrence of famine. After the famine of 1878 the Government began to treat the cost of famine as an ordinary charge on the State and made the provision of an annual sum of one and a half crores of rupees for "Famine Insurance." Till 1907 the cost of famine relief was wholly a provincial charge. In 1907 a new famine insurance scheme was devised. The Central Government placed to the credit of each Province exposed to famine a fixed amount to be drawn in case of famine without trenching on its normal revenues. When this fund was exhausted further expenditure was to be shared equally by the Central Government and the Provincial Government, and if necessary the Central Government was to give further assistance. In 1917, famine relief expenditure was made a divided head,

being shared by the Central Government and the Provincial Governments in proportions of three to one. Under the Reforms of 1919 the financing of famine expenditure was placed on a new basis. Each Provincial Government was required to maintain a famine insurance fund by contributing from its resources a fixed sum every year. Bombay was required to provide Rs. 6,36,000 for expenditure upon famine relief and insurance. This annual contribution is devoted partly to outlay on the construction of protective irrigation works, and, if necessary, on relief measures, the sum not required for these purposes being utilised in building up a famine insurance fund. The balance to the credit of the fund was regarded as invested with the Central Government, which pays interest on it. It was shown as a separate item in accounts. Provision was made to suspend this annual contribution when the accumulated total of the fund was not less than six times the amount of the annual assignment. Under the New Constitution famine relief expenditure is entirely a provincial charge. The arrangement for annual contribution to the famine insurance fund continues as before.

#### FAMINE PROTECTION

Government has not remained content with a policy of famine relief when famine occurs, but has also adopted comprehensive measures to protect the people from the evils of famines and to equip and insure them against their ravages. These measures may be briefly mentioned:

(1) RAILWAYS AND  
IRRIGATION WORKS

43,000 miles of railways have lightened the horrors of famine. There is rarely a universal famine in India. When crops

fail in some parts, there is always a bumper harvest in other parts of India. With the transportation facilities provided by railways which give special concessions, food grains and fodder are promptly and cheaply made available in the affected areas. Railway lines have been constructed in precarious areas with the avowed object of protecting them against the evils of famines. Similarly protective irrigation works have been constructed in these areas. These works are not directly remunerative but they constitute an insurance against famine. A policy of afforestation with the object of securing a steady rainfall is also being pursued in various areas.

(2) MEASURES TO  
INCREASE INCOME

Efforts have been directed to increasing the power of resistance of the people. As an increase in income depends upon an increase in agricultural production, the Agricultural Department is well organised in every Province to stimulate production. Improved qualities of seeds and good breeding bulls are made available to the agriculturists. New varieties of crops are being introduced in various parts of the country. Experimental farms are maintained in all districts to demonstrate the value and practicability of new methods of cultivation. Attempts to increase the yields of crops are made by the supply of chemical manure and better seeds, such as Pusa wheat. Agricultural education is imparted in schools and colleges. A well-organised agricultural research institute is now established at Delhi. There is also an All-India Agricultural Research Council.

(3) RELIEF AND  
PROTECTION  
AGAINST DEBTS

Various measures have been adopted to give relief to the agriculturists

from indebtedness. Co-operative credit societies have been established in all provinces. They supply cheap credit to the peasants. Land mortgage banks have been formed in some Provinces to deal with long-term debts. Debt reconciliation boards are constituted in various provinces. The Government also makes *tagavi* and other loans to the needy agriculturists. Agriculturists are protected from the exorbitant demands of the moneylenders by various Acts: the Deccan Agriculturists' Relief Act in Bombay, the Land Alienation Act in the Punjab, and the Encumbered Estates Acts in other Provinces.

(4) MEASURES FOR  
EMPLOYMENT

The evils of famine are essentially the evils of unemployment. With an overwhelming percentage of her population dependent on agriculture, India's economic life is inevitably one-sided, unbalanced and unstable. As early as 1880, the Famine Commission insisted on the diversification of occupations as a remedy for the evils of famine. Industrial development giving employment to an increasing number is the surest protection against famines. The Central Government and the Provincial Governments which have their own Departments of Industries are endeavouring under a policy of discriminating protection to encourage industries both by direct and indirect methods, thus increasing the national as well as *per capita* income and providing employment for more people.



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